TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [illegible] 1905.

No. [illegible].

HARRY DONOVAN, GEORGE CALLAHAN, CHARLES LEWIS, M. M. LEE, JOSEPH WARD, W. H. ASHLEY, R. L. TAYLOR, I. GANTHIER, I. VAUGHN, ET AL., PETITIONERS,

vs.

PENNSYLVANIA COMPANY.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

PETITION FOR CERTIORARI FILED SEPTEMBER 20, 1905.
CERTIORARI AND RETURN FILED NOVEMBER 4, 1905.

(19,068.)

(19,068.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 417.

HARRY DONOVAN, GEORGE CALLAHAN, CHARLES LEWIS, M. M. LEE, JOSEPH WARD, W. H. ASHLEY, R. L. TAYLOR, I. GANTHIER, I. VAUGHN, ET AL., PETITIONERS,

vs.

PENNSYLVANIA COMPANY.

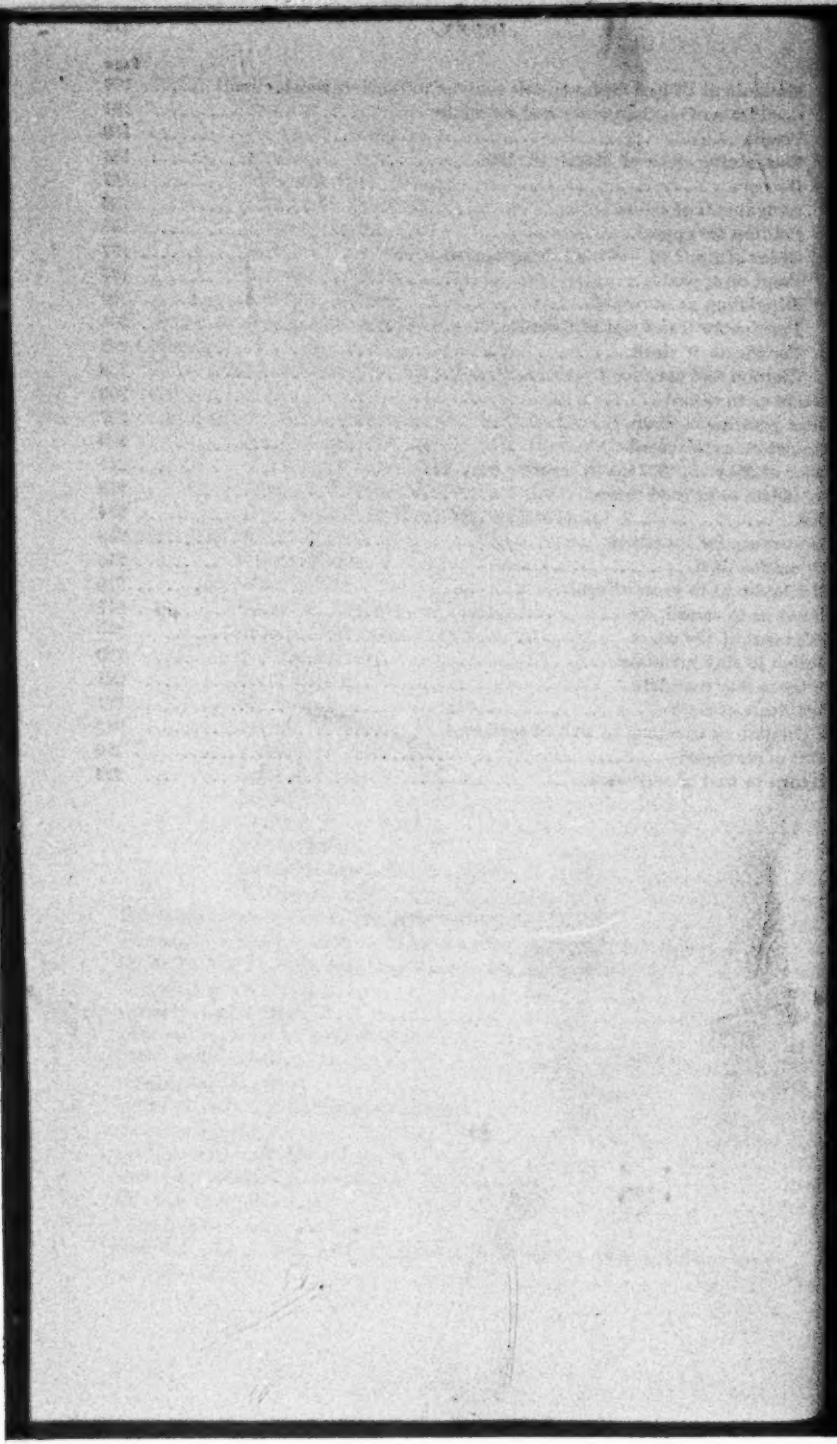
ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE SEVENTH CIRCUIT.

OCTOBER TERM, A. D. 1902.

No. 987.

HARRY DONOVAN, GEORGE CALLAHAN, CHARLES LEWIS, M. M. LEE, JOSEPH WARD, W. H. ASHLEY, R. L. TAYLOR, I. GANTHIER, I. VAUGHN, ET AL.,
Appellants,

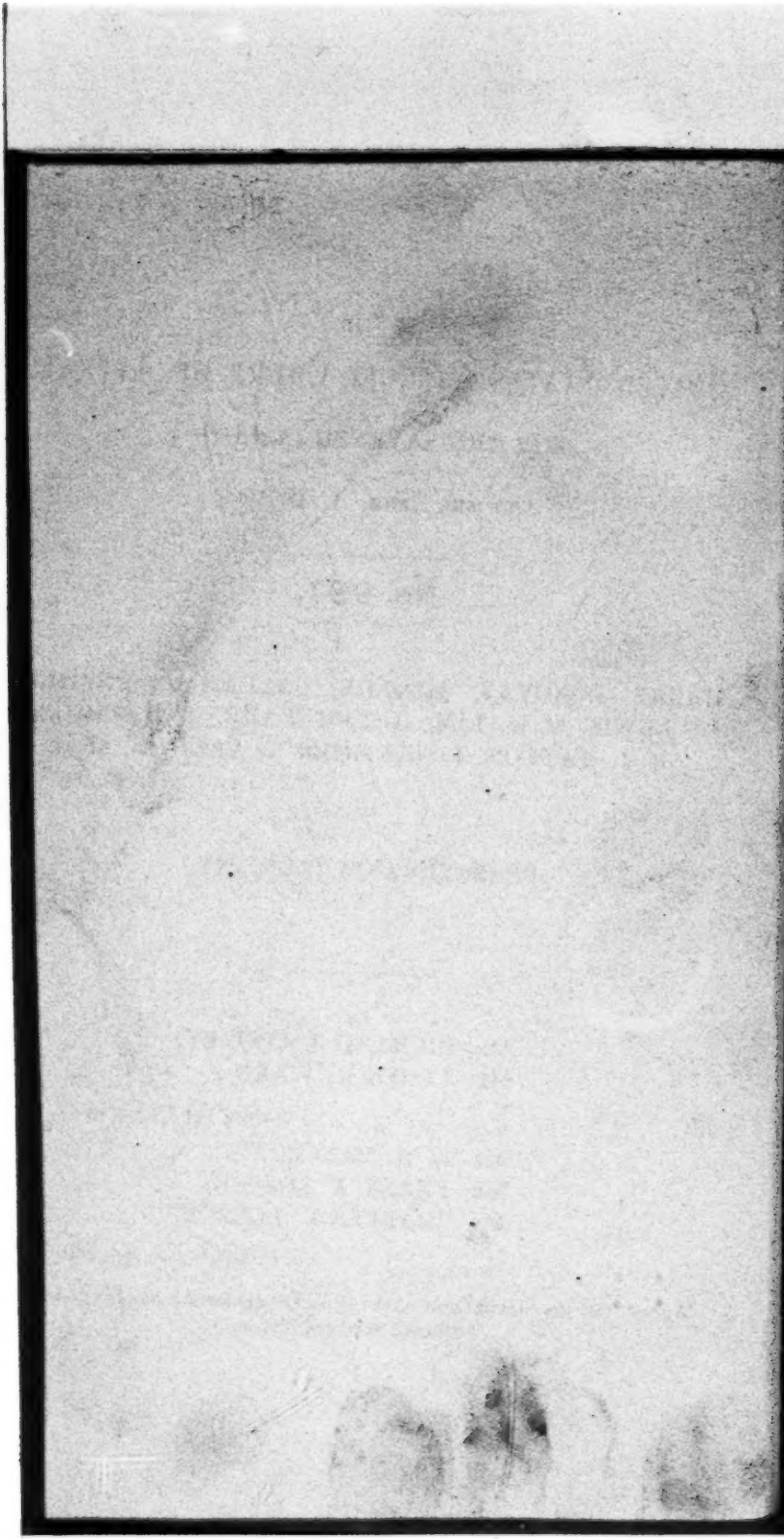
vs.

PENNSYLVANIA COMPANY,
Appellee.

MR. RICHARD J. COONEY,
MR. JAMES R. WARD,
Counsel for Appellants.

MR. E. A. BANCROFT,
MR. FRANK J. LOESCH,
MR. CHARLES F. LOESCH,
Counsel for Appellee.

Appeal from the Circuit Court of the United States for the Northern District of Illinois, Northern Division.



2 Pleas in the Circuit Court of the United States, for the Northern District of Illinois—Northern Division, in Chancery sitting at the United States Court room, in the City of Chicago, in said District and Division, before the Honorable Christian C. Kohlsaat, District Judge of the United States for said Northern District of Illinois, on Friday, the Sixth day of June, in the year of our Lord one thousand nine hundred and two, being one of the days of the regular December term of said Court, 1901, and of our independence the one hundred and twenty-sixth. Pleas.

MARSHALL E. SAMPSELL,
Clerk.

aint, 27.

3 Pennsylvania Company,
26,191.
vs.
Harry Donovan, George Callahan, Charles Lewis, M. M. Lee, Joseph Ward, W. H. Ashley, R. L. Taylor, I. Ganthier, I. Vaughn, Sanford McGill, George Baude, J. Baude, A. Reilly, James Casey, Thomas Casey, Edward Devany, W. Owens, John Kerr, A. Johnson, Tom. Quinlan, John Tievens, M. Brady, George Quinlan, George Gustin, John O'Toole, Nicholas Stokes, C. Connell, James Sullivan, Patrick Quinlan, C. Cunningham, J. Vaughn, Peter Taylor, William Simmons, Patrick Regan, James Regan, John J. Casey, M. Crowley, M. Geary, A. Cook, Charles P. Engle, Eugene Gibbs, and John Casey.
} In Chancery.

NORTHERN DISTRICT OF ILLINOIS—NORTHERN DIVISION.

Be it remembered that on this day to-wit: the 27th day of February, 1902, came the Pennsylvania Company by its solicitors, Messrs. Loesch Brothers and Howell and filed in the clerk's office of said court in said entitled cause a certain Bill of Complaint in the words and figures following to-wit:

4 **BILL OF COMPLAINT.**

United States of America,
Northern District of Illinois,
Northern Division,

IN THE CIRCUIT COURT OF THE UNITED STATES,
In and for the Northern District of Illinois—
Northern Division.

Pennsylvania Company,
Complainant,
vs.
Harry Donovan, *et al.*
Defendants,
In Equity.

To the Honorable, the Judges of the said Circuit Court of the United States, for the Northern District of Illinois—Northern Division, In Chancery Sitting:

The Pennsylvania Company, a corporation organized and existing under the laws of the State of Pennsylvania, and a citizen of the State of Pennsylvania, brings this, its bill of complaint against the defendants hereinafter named, and thereupon your orator complains and says:

First: That your orator is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, and that it is a citizen of said State and has its principal office in the city of Philadelphia and state of Pennsylvania, and your orator is not a citizen of the State of Illinois.

5 That the said defendants, Harry Donovan, George Callhan, Charles Lewis, H. M. Lee, Joseph Ward, W. H. Ashley R. L. Taylor, I. Ganthier, I. Vaughn, Sanford McGill, George Baude, J. Baude, A. Reilly James Casey, Thomas Casey, Edward Devaney, W. Owens, John Kerr, A. Johnson, Tom Quinlan, John Tievens, M. Brady, George Quinlan, George Gustin, John O'Toole, Nicholas Stokes, C. O'Connell, James Sullivan, Patrick Quinlan, C. Cunningham, J. Vaughn, Peter Taylor, William Simmons, Patrick Regan, James Regan, John J. Casey, M. Crowley, M. Geary, A. Cook, Charles P. Engle, Eugene Gibbs and John Casey, are each of them citizens of the State of Illinois, and residents of said Northern District of Illinois, Northern Division aforesaid.

Second: That the matter in dispute between your orator and the said defendants exceeds, exclusive of interest and costs, the

sum or value of two thousand dollars ($2,000) and arises under the constitution and laws of the United States as hereinafter set forth.

Third: That upon the seventh day of April, 1870, your orator the Pennsylvania Company, was incorporated under and by virtue of an act of the legislature of the State of Pennsylvania entitled "An Act to incorporate the Pennsylvania Company, approved April seventh A. D. 1870," for the purpose of building, constructing, maintaining and managing, and was authorized to build, construct maintain or manage a railroad or railroads and any other public or private work or works which might tend to improve, increase, facilitate or develop the trade of the transportation or conveyance of freight, live stock or passengers or other traffic by land or water, upon, in, through or to any part of the United States or the territories thereof, with right to purchase, receive, hold and enjoy all such lands, tenements, leasehold estates and hereditaments, goods and chattels, securities and estates real, personal or mixed, of what kind and quality whatsoever, as might be necessary to erect depots, engine houses, tracks, shops and other purposes of said corporation, and generally to do all and singular the matters and things which to the incorporators therein mentioned their associates, successors and assigns, should appertain to do for the well-being of the said corporation, and the management and ordering of the affairs and business of the same.

Fourth: That on or about the first day of April, 1871, your orator lawfully acquired by lease for a term of nine hundred and ninety one years from July first, 1869, the possession and control of the Pittsburg, Fort Wayne and Chicago Railway, having and owning lines of railway from the city of Chicago in the state of Illinois to Pittsburg in the state of Pennsylvania, and to other points, in and by which lease your orator assumed the obligation of operating and maintaining said railway for the remainder of the term of said lease.

That on or about the first day of April, A. D. 1871, your orator entered upon and took possession of the said Pittsburg, Fort Wayne and Chicago Railway, extending from its passenger station at or near the corner of Canal and Adams streets in the city of Chicago, thence through the city of Chicago in the state of Illinois to the city of Pittsburgh in the state of Pennsylvania, and all its rolling stock and property, and into the exercise and enjoyment of the said franchises and rights as and in accordance with its act of incorporation and with the said lease and the terms and provisions thereof, and entered upon the maintenance and operation of said railway, and has ever since been in possession of and has uninterruptedly

and continuously maintained and operated and does now maintain and operate the said railway extending as aforesaid from its said passenger station in the City of Chicago to the city of Pittsburgh aforesaid, a distance of about four hundred and seventy miles; all of which will appear, and to which for greater certainty as to the terms, tenor and effect thereof, your orator begs leave to refer to the said lease or contract, if the same shall be deemed material.

7 That your orator's said railway constitutes an important railroad line for the interstate transportation of passengers, freight United States mail and express matter.

Fifth: That in the year 1880, your orator erected and constructed upon the station premises on Conal street bounded west by Canal street, south by Van Buren street and north by Madison street being a portion of the premises so leased to it as aforesaid, a large passenger station known as the Union Passenger Station, at a cost exceeding one half million dollars with all the necessary appurtenances thereto belonging, in order to furnish the necessary facilities incident to the operation and maintenance of said station and for the proper conduct of the business thereof; that said station since its construction has been occupied and used and is now occupied and used by your orator, the Pennsylvania Company, and by its tenants, the Chicago and Alton Railway Company, the Chicago, Burlington and Quincy Railway Company, the Chicago, Milwaukee and St. Paul Railway Company and the Pittsburgh, Cincinnati, Chicago and St. Louis Railway Company; that said occupation by its tenants is under the terms of an agreement for perpetual use by said railway companies made between them and your orator, by which it is provided that your orator, the Pennsylvania Company, shall have charge of said passenger station and the maintenance and use thereof, and the control and management of all trains therein and all watchmen and other employes that may be necessary to conduct the passenger business of said station.

Sixth: That the said passenger station is the only terminus in the city of Chicago of each of said lines of railway and through which said station alone they can conduct the exchange of interestate passengers and baggage, the United States mail and express parcels.

Seventh: That the said Chicago and Alton Railway Company controls and operates over one thousand miles of interstate
8 railways between the cities of Chicago and the cities of Bloomington and Springfield, Illinois, and St. Louis and Kansas City,

Missouri, and many other cities and towns in the state of Illinois and Missouri.

That the Chicago, Burlington and Quincy Railway Company controls and operates over seven thousand miles of interstate railways between the city of Chicago and the cities of Denver in the state of Colorado, St. Paul in the state of Minnesota, Cheyenne in the state of Wyoming, Omaha in the state of Nebraska, St. Louis and St. Joseph in the state of Missouri, Deadwood in the state of South Dakota, and many other cities and towns in the states of Illinois, Iowa, Missouri, Kansas, Nebraska, Colorado, Wyoming, Montana, South Dakota and Minnesota.

That the Chicago, Milwaukee and St. Paul Railway Company controls and operates over six thousand miles of interstate railways between the city of Chicago and the cities of Milwaukee and Madison in the state of Wisconsin, Minneapolis and St. Paul in the state of Minnesota; Menominee in the state of Michigan, Fargo in the state of South Dakota, Omaha in the state of Nebraska, and many other cities and towns in the states of Illinois, Iowa, Wisconsin, Minnesota, North Dakota, South Dakota and Nebraska.

That the Pittsburg, Cincinnati, Chicago and St. Louis Railway Company controls and operates over fourteen hundred miles of railway between the city of Chicago and the city of Indianapolis in the State of Indiana, Louisville in the state of Kentuck, Cincinnati in the state of Ohio, Wheeling in the state of West Virginia, and Pittsburgh in the state of Pennsylvania, and many other cities and towns in the states of Indiana, Ohio, West Virginia and Pennsylvania.

That your orator controls and operates over one thousand miles of interstate railways between the city of Chicago and the cities of Fort Wayne in the state of Indiaina, Toledo and Cleveland
9 in the state of Ohio, Erie and Pittsburgh in the state of Pennsylvania, and many other cities and towns in the states of Indiana, Ohio and Pennsylvania.

Eighth: That for the better handling of local and through mails, the United States has established a postal station in a portion of your orator's said passenger station;

Ninth: That the number of passengers arriving and departing from said station averages over thirty thousand (30,000) each day; that a daily average of nine corpes are received at or sent out from said station; that an average of over twenty two hundred (2200) pieces of baggage are received and delivered at said station each day; that there are received and delivered at said station a daily average of over two hundred and fifty (250) tons of United States mail; that

many thousands of express parcels are handled each day at said station and that there arrive at and depart from said station two hundred and fifty seven (257) passenger trains each day, substantially all of said trains arriving and departing between the hours of six A. M. and eleven thirty P. M.

That all tickets of interstate passengers arriving at and departing from said station, known as through tickets, have attached thereto a check or coupon for conveyance through the City of Chicago to the station of any connecting line of railroad designated on such through tickets and not running into or out of said passenger station, and that your orator and the said other railway corporations hereinbefore named have contracts for the use of a line of omnibuses or conveyances for the preformance of the services called for by said coupons or checks, and that said omnibuses or conveyances so employed by contract form the only regular connecting line of transportation between your orator's said station and the stations of other railways in the City of Chicago, and many hundreds of passengers are each day received at said station and depart from said station in omnibuses from and to the various other railway stations next hereinafter named and the hotels in the city of Chicago.

Tenth: That there are five other large railway stations in the city of Chicago, each being the termini of great railway systems, that is to say, the passenger station of the Chicago, Rock Island and Pacific Railway Company and the Lake Shore and Michigan Southern Railway Company; the Grand Central Station, the Chicago and North-Western Railway Company's station; the Dearborn station; and the Illinois Central station, varying in distances from one half mile to a mile and a half from the said passenger station of your orator.

Eleventh: That the main entrance to and exits from said passenger station of your orator for all passengers arriving at or departing from said station and for all employes and the public necessarily and properly using said station is on Canal street about one hundred feet north of Adams street; that substantially all the passengers arriving at said station or departing therefrom pass through said main entrance; that said main entrance is at the head of a flight of stairs leading down to and and up from the station platform upon which trains arrive and depart; that said main entrance consists of a center opening the width of five feet and two side openings each of the width of five feet; that practically all the passengers coming into or leaving said station pass through the center opening of said exits from or to the street and that upon the arrival

of trains discharging their passengers the stairway leading to said door and through said openings leading to the sidewalk is densely crowded with passengers and the public passing out and the same is true also in large part throughout each day of passengers and the public passing into said station prior to the departure of trains;

that the number of trains arriving and departing at said
11 station, as above shown, keeps in constant use the said main passenger entrance for the thousands of arriving and departing passengers; that the sidewalk in front of said main entrance and openings to the station is of the clear width of twelve feet, as prescribed by ordinance of the said city of Chicago, and that upon the east side of Canal street at said main entrance door and for some distance north and south are temporarily stationed preceding the departure and arrival of the various trains, omnibuses which have brought and dicharged interstate passengers from other passenger stations and passengers from hotels and are waiting for other interstate or through passengers destined for other railroads whose termini are at one or the other of the various passenger stations in the city of Chicago aforesaid, or whose destination is at hotels in the city of Chicago, said omnibuses being engaged only in transporting through passengers between said stations and between said stations and hotels in the city of Chicago.

That the remainder of the frontage of said station north and south of said main entrance has many openings for the reception and delivery of baggage, one entrance to the ladies' room, near the corner of Adams street, and two entrances direct to the railroad platform within 200 feet north of Adams street, and the entire street frontage for a distance of about three hundred feet north of Adams street and one hundred and fifty feet south of Adams street is in constant us by the arriving and departing passengers and public and by vehicles discharging and receiving passengers, baggage, express and other freight.

Twelfth: That every part of said station and the free and unobstructed use of all entrances and exits thereof and the sidewalks and street adjacent to such entrances and exits, is necessary

for the proper transaction of the ordinary daily business of your
12 orator, and to properly afford to all passengers, the public and employes the usual and convenient facilities incident and appurtenant to such passenger station; that upon occasions when an unusual number of passengers arrive or depart therefrom the facilities of such station and the exits and entrances and the use of the said sidewalk and street frontage are taxed to their utmost capacity.

That your orator acquired the said station grounds fronting

on Canal street from Madison to Van Buren streets for the purpose of obtaining free and unobstructed use (jointly with the ordinary use by the public) of the sidewalks and streets abutting thereon for the use of its passenger station; that when it erected said passenger station in the year 1880, it was and is so constructed as to afford all convenient access to and from said station for passengers, employes, express and vehicles, and that your orator and its lessor paid large sums of money aggregating over three hundred thousand dollars ($300,000) for the purchase of real estate for the use of its said station because of valuable frontage on said Canal street and the abutter's rights appurtenant thereto. Bill filed 19

Thirteenth: That for many years legal contests have been carried on by your orator against hackmen, expressmen and hotel runners congregating about its said station in the endeavor to protect its passengers against extortion and annoyances of said hackmen, hotel runners and expressmen who gather about said station noisily soliciting passengers leaving said station to transport their baggage or their persons, that by reason of the nuisance created by said expressmen and hackmen and the damage done to your orator by their said actions and in the many wrongs done to passengers and constant and daiy annoyance to helpless women, children and old people and especially to passengers, male and female, who are strangers in said city in taking them to wrong destinations and making extortionate charges, your orator was in the year 1894
13 compelled to institute a partial hack service of its own, and thereupon for the purpose of protecting the passengers' rights at said station, it did on the thirty first day of December, 1894, enter into a contract with one Leroy Eighme for the purpose of furnishing sufficient carriage and cab service to passengers arriving at said station, and for that purpose gave to said Eihme for a carriage stand a small piece of ground in the northwest corner of its passenger station at the corner of Madison street near its power house, being a piece of ground about thirty two (32) feet wide and about ten (10) feet long, and required said Eihme to keep at all times clean vehicles, carriages and cabs with well uniformed, honest and competent drivers who would be satisfactory to your orator; to make charges for the use of such carriages and cabs only in accordance with the ordinances of the City of Chicago, that said Eihme has been allowed by your orator to place an agent inside said station to notify arriving passengers whose destination was or is the City of Chicago that suitable cabs and carriages could be obtained from said agent; and when needed said agent by an electric bell notified the first of said cabs or carriages of said

plaint, 27,

Eighme in line, and the same was then driven to a point south of said main passenger entrance for the reception of the passenger who has engaged the same, said cab or carriage using the frontage of said station but for a moment while receiving such passenger; that by means of such arrangement your orator is able to and does fully provide for the wants of all incoming passengers who desire cabs or carriages for transportation from said station to any part of said city of Chicago; but said arrangement or agreement with said Eighme was terminated by your orator upon the thirty first day of January A. D. 1902 and a similar arrangement was made with the Parmelee Transfer Company which thereafter succeeded said Eighme in the said business and now carries it on in the same manner as said Eighme formerly did as aforesaid.

14 Fourteenth: That by ordinance of the City Council of the city of Chicago printed and published as Section 498 of the Revised Code of Chicago, A. D. 1898 (said section having been originally passed as an ordinance of the city of council in 1885) the east side of Canal street occupying one hundred and ten (110) feet between Adams and Madison streets, as the superintendent of police should direct was made a hack stand for licensed hack drivers, and that ever since said time said hacks have used said street front of your orator, your orator claims, illegally and without its consent and to the detriment and permanent injury of your orator's said property, as a station or stand for their cabs, carriages and express wagons; that said licensed hackmen, expressmen and runners for hotels gave your orator great trouble and its passengers great annoyance by the numbers in which they congregate in front of your orator's said main entrance and in the riotous manner in which they solicited and laid hold of passengers leaving said station; that your orator from time to time was compelled to take legal action and did prosecute various suits against said hackmen, expressmen and hotel runners in order to maintain its property rights and the rights of its passengers, and the duty which your orator owed to the public and to its passengers arriving and departing at said station.

Fifteenth: That said hackmen subsequently induced the city council of the city of Chicago in January 1896, to pass an ordinance authorizing the first hackman and first cabman in line at said hack-stand to stand in front of your orator's main passenger entrance as aforesaid and there solicit passengers. Thereupon your orator filed its bill in equity in the circuit court of Cook County for relief and said court after a hearing entered its decree finding said ordi-

15 nance to be illegal and void, and perpetually enjoined the enforcement of said ordinance.

And your orator charges that recently, and especially since the month of January, 1892, the defendants above named and others acting with them whose names are unknown to your orator, have conspired and confederated together to injure the business of your orator and injure and damage your orator's property rights, as aforesaid, and have gathered and do daily gather in numbers from eight to twenty men at a time, in rows and groups, upon the sidewalk in front of said main entrance and solicited and do solicit in loud and boisterous manner custom for their various business, and have entered your orator's said station and do now daily enter your orator's said station at said main entrance by twos and threes at a time without your orator's consent and against its express objections, and in like loud and boisterous voices and manner solicit incoming passengers and baggage for their said vehicles and said defendants by their numbers and noisy calls so conducted and do conduct themselves in plying their said vocations that they harrass and annoy its interstate and local passengers, and frequently forcibly lay hold of passengers leaving said station in order to secure their patronage, to the annoyance and confusion of said passengers and to the injury and damage of your orator; that the number of said defendants upon arrival of each train at the entrance and to within said station, so soliciting for their several businesses, has become so great that by said boisterous actions and their obstruction of the said sidewalk and of the interior of your orator's station without your orator's consent, they have in large part deprived your orator of its lawful property rights in its said street frontage and of the free use of its station and of the full use of its property and they thereby create and continue a private nuisance damaging to your orators property and depriving your orator of the full, lawful beneficial use of its said station and street frontage and of the main entrance thereto, and
16 have prevented and do now daily prevent and hinder your orator from securing to the arriving and departing passengers at said station a free and uninterrupted passage from and to your orator's said station and the trains arriving and departing therefrom; that your orator has appealed to the superintendent of police of the City of Chicago for protection from against said actions of said defendants and to prevent said defendants from obstructing the entrance to said station and from blocking and obstructing said sidewalk in front of said entrance or any part thereof whilst engaged in soliciting custom, and to prevent said defendants from entering your orator's station to solicit patronage for their said cabs and carriages, but, as your orator is advised and so charges the fact o be, said superintendent of police has been advised by the corporation counsel of said City of Chi-

plaint, 27, cago that he had no right to afford your orator such protection, and that the said hackmen, expressmen, and hotel runners had full legal right and authority to congregate in front of your orator's said passenger station to there ply their several business as aforesaid, and to enter your orator's said station and there ply their business of soliciting custom, your orator's property rights within said station and upon the sidewalk and street abutting said main entrance to the contrary notwithstanding.

That by the acts of said defendants as aforesaid great and substantial damages are inflicted upon your orator's property different in kind and degree from that suffered by the general public and incapable of computation and which cannot be compensated at law.

That all the defendants who are hack-drivers are members of the Chicago Hack, Coupe and Cab Drivers' Union, an incorporated association or society, as your orator is informed and believes and so charges the fact to be, composed of hack, coupe and cab drivers
17 in the City of Chicago; that all said defendants have confederated and conspired together with other members of said association, whose names are unknown to your orator, to deprive your orator of the full use, regulation and control of its station and of such incoming passengers who within the station desire to secure cab or carriage accommodations for transportation from said station to other points in the City of Chicago; and the defendants, together with other members of said association, unknown to your orator, maliciously aid each other in carrying said purpose into effect by entering said station wearing caps similar in uniform to employes of your orator in and about said station and to agents an employes of said Parmelee Transfer Company, in order to deceive and defraud incoming passengers into the belief that said defendants are employed by your orator or said Parmelee Transfer Company for the purpose of soliciting incoming passengers for cabs and carriages or are there with the consent and approval of your orator; that thereby passengers are deceived and defrauded into the belief that they are dealing with agents or employes of your orator or of said Parmelee Transfer Company and are warranted in placing confidence in said defendants under the belief that they are such servants or agents of your orator or of said Parmelee Transfer Company; said defendants claiming and asserting the right, and acting upon such claim and assertion, to enter the station of your orator at all times in such numbers as may suit their malicious purposes, to remain there and occupy such portions of said station as they see fit in soliciting the custom of incoming passengers, without regard to the rules or regulations of your orator or the use to which its property is lawfully de-

voted, and without its consent and therefore illegally and without right to the prejudice of its duties and business as a common carrier, and by their said actions and devices largely depriving your or-
18 ator of the use and control of its property, to its irreparable loss and damage.

Sixteenth: That your orator has caused frequent complaints under oath to be made before a Police Magistrate of the City of Chicago against certain of the defendants who have entered your orator's said station to solicit custom of incoming passengers without your orator's consent and caused warrants to be issued against such defendants; that in three instances where the defendants were adjudged guilty and fined by the Police Magistrate, they appealed from such judgment and fine and immediately thereafter again entered your orator's station to solicit the custom of passengers; that in ordinary course said appeals will not be heard in the higher court within one year from this time that your orator caused said cabmen to be again arrested upon like complaints and warrants, whereupon the defendants called for jury trials and were granted such trials before juries summoned by the constable from the vicinage, that is to say, mostly from neighboring barrooms and in each case of the several cases so tried, such jury found the defendants thereto, being also defendants herein, not guilty; and your orator alleges that further prosecutions at law against said defendants or any of them for violation of said city ordinances would be burdensome and expensive to your orator and fruitless.

Seventeenth: Your orator further charges upon information and belief, and upon such information and belief charges the fact to be, that the defendants and each of them are financially irresponsible, and any judgment obtained by your orator against any of said defendants individually for damages for trespass upon your orator's said property could not be collected upon execution; that if your orator sought a remedy at law for damages, it would be wholly ineffectual, as a multiplicity of suits would have to be instituted and con-
ducted at great cost and delay to your orator but without finan-
19 cial result to your orator and without securing to it any beneficial results, or protection to its property; that the damage to your orator and its said property rights caused by the said trespasses and actions of said defendants is serious and palpable, but is not susceptible of proof upon any money basis in an action at law according to the ordinary rules of evidence at law, and such damage is irreparable.

Your orator further charges that by reason of the facts aforesaid and the premises considered, it has no plain or adequate remedy

at law against the aforesaid actions and trespasses of said defendants and is without power at law to protect its rights of property in or to its said station and street frontage, and is relievably only in a court of equity.

Your orator further alleges that by the acts of said defendants it is deprived of its property without just compensation and without due process of law and is denied the equal protection of the laws in respect to its said property, contrary to the Fourteenth Amendment of the Constitution of the United States, and your orator craves the benefit of the said Amendment, to the same extent as though the same were set out in full.

To the end therefore, that your orator may have that relief which it can only obtain in a court of equity, and that the said defendants may answer the premises but not under oath (answer under oath being hereby expressly waived) and that the said defendants and each of them may be perpetually enjoined from entering the station of your orator for the purpose of soliciting the custom of incoming pasengers for cabs, carriages, express wagons or hotels respectively; and that the occupation of the sidewalk and street abutting the main entrance of your orator's said station by said defendants for the purpose of soliciting custom of passengers for their said cabs, carriages, express wagons and hotels be decreed to be a nuisance to your orator and damaging to its property; and that said defendants and each of them and all persons acting in concert with them, whose names are unkown to your orator, may be perpetually enjoined from congregating singly or in larger numbers upon the said sidewalk at the main or any other entrance of your orator's said station for the purpose of plying their respective vocations as hackmen, cabmen, expressmen or hotel runners, and from interfering with or soliciting the custom of any of the passengers upon the sidewalk adjoining said station at any main or other entrance to said station; and that your orator may have such other and further relief in the premises as the nature of its case may require, and to Your Honors shall seem meet.

May it please Your Honors to grant unto your orator a writ of subpœna issued out of and under the seal of this Honorable Court to be directed to the said defendants, Harry Donovan, George Callahan, Charles Lewis, M. M. Lee, Joseph Ward, W. H. Ashley, R. L. Taylor, I. Ganthier, I. Vaughn, Sanford McGill, George Baude, J. Baude, James A. Casey, A. Reilly, Thomas Casey, Edward Devaney, W. Owens, John Kerr, A. Johnson, Tom. Quilan, John Tievens, M. Brady, George Quinlan, George Gustin, John O'Toole, Nicholas Stokes, C. Connell, James Sullivan, Patrick Quinlan, C.

Cunningham, J. Vaughan, Peter Taylor, William Simmons, Patrick Regan, James Regan, John J. Casey, M. Crowley, M. Geary, A. Cook, Charles P. Engle, Eugene Gibbs and John Casey, commanding them and each of them on a certain day and under a certain penalty in the said writ to be inserted, personally to be and appear before Your Honors at this Honorable Court, then and there full, true and perfect answer to make to all and singular the premises, and further to stand to, abide by and perform such further orders, direction and decree herein as to Your Honors shall seem meet and agreeable to equity and good conscience.

May it please Your Honors to grant unto your orator a temporary injunction or restraining order, restraining the said Harry
21 Donovan, George Callahan, Charles Lewis, M. M. Lee, Joseph Ward, W. H. Ashley, R. L. Taylor, I. Ganthier, I. Vaughn, Sanford McGill, George Baude, J. Baude, A. Reilly, James Casey, Thomas Casey, Edward Devaney, W. Owens, John Kerr, A. Johnson, Tom, Quinlan, John Tievens, M. Brady, George Quinlan, George Gustin, John O'Toole, Nicholas Stokes, C. Connell, James Sullivan, Patrick Regan, John J. Casey, M. Crowley, M. Geary, A. Cook, Charles P. Engle, Eugene Gibbs and John Casey, defendants, and all persons claiming to act under their or each of their authority, direction or control, or to whom notice of such injunction shall come, to absolutely desist and refrain from entering the said station of your orator to solicit the custom of incoming passengers for cabs, carriages, express wagons, or hotels, and to absolutely desist from congreagting upon the sidewalk in front of, adjacent to or about the said main entrance or any other entrance to your orator's said passenger station and from there plying their said vocation of hackmen, expressmen or hotel runners respectively, until such time as Your Honors shall appoint and direct and order herein; and that upon such hearing the temporary restraining order prayed for be confirmed until the final termination of this writ, and that thereupon said restraining order may be made perpetual against all said defendants and all other persons receiving notice of such restraining order or injunction.

And your orator will ever pray, etc.

PENNSYLVANIA COMPANY,
Complainant.

By THOMAS MCGLENN,
Station Master

LOESCH BROS. & HOWELL,
Complts. Solicitors,

FRANK J. LOESCH,
EDGAR A. BANCROFT,
Of Counsel.

22 UNITED STATES OF AMERI
Northern District of Illinois,
Northern Division.

State of Illinois
County of Cook. } ss.

Thomas M. Gleen, being duly sworn, deposes and says that he is the station master of complainant, and as such has charge and control of the Union Passenger Station, being the station mentioned in the said Bill of Complaint; that he has read the above and foregoing Bill of Complaint, and knows the contents thereof, and that the same is true of his own knowledge.

Affiant further says that the rights of the complainant will be unduly prejudiced if the temporary injunction is not issued immediately without notice to said defendants.

THOMAS MCGLEEN.

Subscribed and sworn to before me this 27th day of February, A. D. 1902.

PERCY A. SULLIVAN,
[SEAL.] *Notary Public.*

(Endorsed) Filed, Feb. 27, 1902, S. W. Burnham, Clerk.

23 And on to-wit: the third day of March, 1902, a writ of subpœna issued out of the clerk's office directed to the Marshal of said district to execute, which said subpœna together with the memorandum thereto attached, and the Marshal's return thereon endorsed is in the words and figures following to-wit:

24 United States of America,
Northern District of Illinois, } ss.
Northern Division.

The United States of America, To Harry Donovan, George Callahan. Charles Lewis, M. M. Lee, Joseph Ward, W. H. Ashley, R. L. Taylor, I. Ganthier, I. Vaughn, Sanford McGill, George Baude, J. Baude, A. Reilly, James Casey, Thomas Casey, Edward Devaney, W. Owens, John Kerr, A. Johnson, Tom. Quinlan, John Tievens, M, Brady, George Quinlan, George Gustin, John O'Toole, Nicholas Stokes, C. Connell, James Sullivan, Patrick Quinlan, C. Cunningham, J. Vaughn, Peter Taylor, William Simmons, Patrick Regan, James Regan, John J. Casey, M. Crowley, M. Geary, A. Cook, Charles P. Engle, Eugene Gibbs and John Casey, Greeting:

We command You and Every of You, That you appear before our

Judges of our Circuit Court of the United States of America, for the Northern District of Illinois, at Chicago, in the Northern Division of said District, on the first Monday in the Month of April, next, to answer the bill of complaint of Pennsylvania Company this day filed in the Clerk's office of said Court, in said City of Chicago, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the Marshal of the Northern District of Illinois to Execute.

Witness the Hon. Melville W. Fuller, Chief Justice of the United States of America, at Chicago aforesaid, this 3rd day of March, in the Year of our Lord one thousand nine hundred and two, and of our Independence the 126th year.

S. W. BURNHAM, *Clerk.*

Memorandum.

The above named defendants are notified that unless they and each of them shall enter their appearance in the Clerk's office of said Court, at Chicago aforesaid, on or before the day to which the above Writ is returnable, the complainant's bill will be taken against them as confessed, and a decree entered accordingly.

S. W. BURNHAM,
Clerk.

25 MARSHAL'S RETURN.

The attorneys for complainant failing to make a deposit to cover fees of service, this writ is returned unexecuted this 7th day of April, A. D. 1902.

JOHN C. AMES,
U. S. Marshal.
By M. E. PATTERSON,
Deputy.

(Endorsed) Filed, Apr. 9, 1902, Marshall E. Sampsell, Clerk.

26 And on to-wit: the 27th day of February, 1902, being one of the days of the regular December term of said Court, 1901, in the record of proceedings thereof in said entitled cause before the Hon. Christian C. Kohlsaat, District Judge, appears the following entry to-wit:

. 27, ng mo- relim- ction.

ORDER OF FEBRUARY 27, 1902.

Pennsylvania Company,
26191. vs.
Harry Donovan, *et al.*

On the filing and reading of the bill of complaint herein, It is Ordered that complainant's motion for preliminary injunction be set down for hearing on March 6, 1902, at 10 o'clock A. M. and that complainant have until 10 o'clock A. M. of March 3, 1902, to file affidavits in support of said motion and that the defendants have until 2 o'clock P. M. March 5, 1902, to file affidavits in reply thereto.

It is further Ordered that a copy of the said motion and of this order be served on defendants by by 10 o'clock A. M. of March 3, 1902.

Will- hite, h 3,

27 And on to-wit: the third day of March, 1902, there was filed in the clerk's office of said court in said entitled cause the affidavits of William G. White, William J. Higgins, Thomas J. Barry, Jacob Freund, James P. Zeigler, Patrick McShane, Edward J. Naylor, Patrick J. Twohey, Frank J. Burton, John J. Hartsock, William A. Boatman, George W. Metzger, Robert W. Richards, Elizabeth Gridley, Thomas P. Kennedy, Andrew Naylor, William J. Sullivan, Thomas M. Glenn, Arthur R. Ratsch, which said affidavits are respectively in the words and figures following to-wit:

28 ## AFFIDAVIT OF WILLIAM G. WHITE.

United States of America,
Northern District of Ilinois,
Northern Division.

In the Circuit Court of the United States,

For the Northern District of Illinois

Northern Division.

Pennsylvania Company
vs.
Harry Donovan, *et al.*

William G. White, being first duly sworn, on oath deposes and says that he resides at Number 1018 Ridge Place, in the city of Evanston, County of Cook and state of Illinois, that he is secretary of the

Union Passenger Station, situated between Madison and Adams streets on the east side of Canal street in said city of Chicago, and that he has been acting in said capacity of secretary since the year 1897. Affidavit filed 1907

That as secretary as aforesaid, it is necessary for him to have a general supervision of the conditions of the depot, and all matters and things that relate in any way to said Union Passenger Station.

This affiant says that his office is on the second floor of said building, and that to reach said office he passes through the main entrance of said passenger station on Canal street several times each day; that he is acquainted with the defendants hereto, either personally, by sight or reputation, and has known them for some time past. That in going to and from his office, and while entering or leaving the said Union Passenger Station at its main entrance he has seen the defendants, or some of them, in groups of from eight to twenty formed in front of the main entrance to said Union Passenger Station on the sidewalk on Canal street and also inside of the said Union Passenger Station at its main entrance for the purpose of soliciting patronage for their cabs, carriages and express wagons.

This affiant further says that in forming such groups and congregating in the numbers that they do at the said entrance and
29 inside the said Union Passenger station at its main office, they obstruct the free ingress and egress of passengers to said station, and while soliciting patronage do so in a loud and boisterous manner, and in their effort to secure patronage block the way so that other passengers leaving said depot after arriving thereat upon through, interstate, local or suburban trains, find it difficult to pass them.

This affiant further says that for a long time said defendant hackdrivers formed a regular cordon in front of the main entrance to said depot and that it was impossible for any passenger leaving said depot to do so without passing through that cordon and running the gauntlet of all of the defendants who formed it, to the inconvenience, worry and annoyance of said passengers, and particularly to the great annoyance, hindrance and bother of ladies or children who found it necessary in their exit from said depot to pass by the defendants.

This affiant further says that he believes that nearly all if not all of said defendants who congregate in front of said depot and at the main entrance thereto and exit thereof, chew tobacco and smoke and are in the habit of expectorating on the floor to said entrance and exit thereof, and in that way causing filth and dirt to accumulate, to the detriment and damage of the said depot building, and to the inconvenience and annoyance of ladies passing to and from said depot, and thus subject the complainant and the railway companies using said depot to loss and damage for injury to the clothing and

wearing apparel of ladies and others on account of and by reason of the filth so accumulated and caused by said defendants.

This affiant further says that two of the defendants are now stationed on the inside of the main entrance to said depot, and have a partial uniform in the form of a cap decorated with imitation gold lace and upon which the words "Cab Agt" are plainly indicated; that these men call out to passengers arriving on through, interstate, local and suburban trains or who are leaving said depot, "Cab and carriage" and by their partial uniform indicate to said passenger that they have the authority of the management of the Union Passenger Station to ply their calling in the place where they stand; that such conduct on the part of the defendants is misleading and causes worry and annoyance in a great many cases to defendants, especially to those who have coupon tickets entitling them to free and continuous passage on their route from the Union Passenger Station to some other railway passenger station indicated upon the railway ticket to which said coupon is attached. This annoyance is caused by said defendants giving wrong information to the passenger or passengers who may have such coupon tickets, and by endeavoring to induce said passengers to become one of their customers, said defendants well knowing at the time that the passenger is entitled to a free continuous conveyance from the Union Passenger Station to some other station indicated upon their ticket and thus causing the said passenger extra expense.

This affiant further says that said defendants have been ordered out of said station and told that they had no business and no right within the entrance thereto and that no one is allowed or permitted to loiter or stand within the main entrance to said depot or in any part of said depot unless such person is there as a passenger or on business connected with some company or companies doing business at said Union Passenger Station.

That the said defendants, in carrying on their business in the way they do, forming groups and otherwise conducting themselves in an improper manner, prevent the employes of the Union Passenger Station from properly carrying out their duties to the general public and cause damage and injury to the property of the said Union Passenger Station, and that the said defendants, in forming such groups and numbers in the main entrance to said passenger station, block the entrance and in that way cause a damage to the said complainant and to its proper use of the said Union Passenger Station.

W. G. White.

Subscribed and sworn to before me this 1st day of March, A. D. 1902.

JAMES STILLWELL,
Notary Public.

[SEAL]

(Endorsed) Filed March 3, 1902, S. W. Burnham, Clerk.

AFFIDAVIT OF WILLIAM J. HIGGINS.

United States of America,
Northern District of Illinois,
Northern Division,

IN THE CIRCUIT COURT OF THE UNITED STATES,

For the Northern District of Illinois,

Northern Division.

Pennsylvania Company,
vs.
Harry Donovan, *et al.*

33 William J. Higgins, being first duly sworn, deposes and says that he resides at Number 1458 Harvard Avenue in the City of Chicago, and is employed as a special police officer at the Union Passenger Station situated on the east side of Canal Street and between Madison and Adams Streets in the City of Chicago.

This deponent says that he has been employed as such police officer at the Union Passenger Station for a period of about fourteen months last past, and is still so employed as special police officer.

That he has also been sworn in as a police officer of the City of Chicago;

That his duties in and about said passenger station consist of directing passengers going to and departing from trains, and in the general preservation of peace and order about said station.

Affiant further states that in the performance of his duties as aforesaid it is necessary for him to go upon the sidewalk in front of said depot to meet passengers arriving or departing from trains, and to go up and down the stairs at the main entrance to said depot upon Canal Street a great many times in each day; that when in discharge of his said duties as aforesaid, he comes in contact with

nd meets all, or a great many of the defendants in this case at ifferent times each day; that he is well acquainted with said efendants by sight and knows many of them by their names, hat nearly all of the said defendants are cabdrivers or expressmen; nd stand with their cabs or express wagons on the east side of anal Street between Madison and Adams Street and in front f the Union Passenger Station; that said defendants form into roups of from eight to twenty men on the sidewalk in front of the ain entrance to the Union Passenger Station and some of them nter said station at said main entrance in twos and threes to olicit passengers for their said hacks or carriages; that when ormed into said groups they are loud and boisterous in their lanuage, and frequently lay hold of passengers in their attempts to olicit their custom, and in that way and others they annoy and arass said passengers arriving at said Union Passenger Station n through trains as well as passengers from local or suburban rains; that when formed into groups of from eight to twenty en on the sidewalk in front of the main entrance to said Union assenger Station and in the interior of the said main entrance to he said Station, they obstruct the sidewalk and entrance and interfere with the ingress and egress of passengers for through, interstate and also for suburban or local passenger trains; that their abs and carriages stand in front of said Union Passenger Station n the arrival of trains and prevent passengers from through, interstate, local and suburban trains choosing for themselves a carriage to carry them to their destination in the City, and also prevent through and interstate passengers from using coupons attached to their tickets entitling said passengers to be conveyed from the Union Passenger Station to some other railway station in said city by the proper conveyance called for by said coupon, to the delay and personal inconvenience of the passenger.

This affiant further states that he knows of several cases which have happened during the past month wherein passengers have arrived in said station by the interstate passenger trains, and have had in their possession coupons entitling them to ride in a carriage from the said Union Passenger Station to another depot or railway station in said city, so as to make a continuous trip in their passage through said city; that some of the defendants herein have taken the tickets so held by the said passengers and have endeavored to induce them to ride in their cabs or carriages to their destination, but when said defendants found that the said passenger or passengers would not pay any additional fare for the purpose of riding in their cabs, the defendants, or some of them, finally told the said passengers that they could noot ride in their conveyance

upon the coupons which they held, and finally directed them return to the said Union Passenger Station for the proper carriages, to the annoyance, delay and expense of said passengers;

That all of the hackmen who enter said station as aforesaid gave provided themselves with uniforms, and that their caps have hold braid around them and are inscribed with the words "Cab Agent," that said hackmen have provided themselves with
34 said uniform for the purpose of deceiving, as this deponent believes, passengers entering into and going out of the said passenger station, and making them believe that they are employed by the Union Passenger Station as its servants and agents.

This affiant further states that the main entrance to said passenger station consists of three doors, each having an opening of five (5) feet in width; that this interference with the proper ingress and egress to and from said passenger station, and obstruction of the said sidewalk in front of the main entrance to said station occurs on the arrival of every through, local and suburban passenger train each and every day.

This affiant further says that it is the custom of the defendants who enter the Union Passenger Station at its main entrance to solicit passengers at the station leading from the track platform to Canal Street by calling out in a loud and boisterous manner "Cabs and carriages here," and when one of said defendants secures a customer, he rushes out on the sidewalk in front of the said main entrance and waves a handkerchief as a signal to some other of the defendants standing about one block north of said main entrance on Canal Street in front of the said Union Passenger Station to drive his cab or carriage to the main entrance in front of said station; that the manner in which these defendants conduct themselves in soliciting said passengers, as in last paragraph mentioned, greatly interferes with the ingress to and egress from said main entrance to the said Union Passenger Station, and prevents said passengers from using their own discretion is selecting a conveyance suitable to themselves, and the manner in which the said defendants rush through the crowd of passengers entering and leaving said station at its main entrance not only interferes with, but is dangerous to them by the way in which said defendants jolt against and shove about and otherwise interfere with said passengers.

This affiant further states that he knows of one instance which happened on or about February Fifteenth, 1902, wherein one of the defendants, Walter Owen by name, grabbed a satchel or grip belonging to a passenger coming up the stairs from the track platform leading to the main entrance to said Station, and started out with it through the center of the door; that said passenger called to the said

defendant, Owen, several times that he did not care to employ him, and that after some time he finally succeeded in getting his grip back from the said Owen.

This affiant further states that the said defendants form themselves in a group or groups at the main entrance to said passenger station, and in that way block up the said entrance, and while in such groups talk amongst themselves, tell stories, slap each other on the back, putting up their hands in the attitude of a pugilist and in this way interfere with the ingress and egress of passengers to and from said main entrance; that most of the defendants, if not all of them, chew tobacco, expectorate in the said main entrance and upon the sidewalk immediately in front thereof, causing filth and dirt to collect, to the detriment and damage of the dresses of ladies and other passengers finding it necessary to use said main entrance.

This affiant further states that City police officer, William J. Gibbons, is stationed at the Union Passenger Station by said City of Chicago; that said Gibbons has been instructed by his superior officer on the said police force of the said City of Chicago not to interfere with any of said defendants while standing within the main entrance of said Station or upon the said sidewalk immediately in front thereof, that this affiant heard the said officer Gibbons testify to this fact, after being duly sworn in the trial before Justice Eberhard, of one George H. Baude, who was arrested for standing within the said main entrance of said Union Passenger Station and soliciting for passengers.

W. J. Higgins.

Subscribed and sworn to before me, this 1st day of March, A. D. 1902.

James Stillwell,
Notary Public.

[SEAL]

(Endorsed) Filed Mar. 3, 1902, S. W. Burnham, Clerk.

35 AFFIDAVIT OF THOMAS J. BARRY.

United States of America,
Northern District of Illinois,
Northern Division.

IN THE CIRCUIT COURT OF THE UNITED STATES,

Northern District of Illinois,

Northern Division.

Pennsylvania Company
vs.
Harry Donovan, *et al.*

36 Thomas J. Barry, being first duly sworn, on oath states that he resides at Number 1106 South Ridgeway Avenue in the City of Chicago, County of Cook and State of Illinois; that he is employed as usher at the Union Passenger Station in said City of Chicago, and has been so employed in that position for about sixteen years last past.

Affiant further states that his duties as usher consist of assisting passengers going to and coming from passenger trains entering said passenger station, and that he is on duty every day.

Affiant further states that in performance of said duties it is necessary for him to go on the sidewalk in front of said depot to meet passengers arriving or departing, and to go up and down the stairs at said main entrance to said depot from Canal Street a great many times each day; that when in discharge of said duties, as above described, he comes in contact with and meets all of the defendants in this case at different times each day; that he is well acquainted with all of said defendants by sight and knows all of them by their names, and he is aware of the fact that each one of said defendants is a cab-driver or expressman and stands on the east side of Canal Street between Madison and Adams Streets and in front of the Union Passenger Station; that said defendants form groups of from eight to twenty men on said sidewalk in front of the main entrance to the Union Passenger Station, and some of them enter said station at said main entrance in twos and threes to solicit passengers for their hacks or carriages; that when formed into said groups, they are loud and boisterous in their manner, and frequently lay hold of passengers in their attempt to solicit their custom and in that way and others they annoy and harass said passengers arriving at said Union Passenger

Station on through trains, as well as passengers from local or suburban trains; that when formed into groups of from eight to twenty or more men on the side walk in front of the main entrance to said Union Passenger Station and in the interior of the main entrance to said station they obstruct the side walk and entrance and interfere with the ingress and egress of passengers for through or interstate passenger trains, and also for suburban or local trains; that their cabs and carriages stand in front of said Union Passenger Station on the arrival of trains and prevent passengers from through, interstate, local and suburban trains choosing for themselves a carriage to carry them to their destination in the city, and also prevent through and interstate passengers from using coupons attached to their tickets entitling said passengers to be conveyed from the Union Passenger Station to some other railroad station in said city by the proper conveyance called for by said coupon, to the delay and personal inconvenience of the passenger;

That all the hackmen who enter said station, as aforesaid, have provided themselves with uniforms, and that their caps have gold braid around them and are inscribed with the words "Cab Agent"; that said hackmen have provided themselves with said uniforms for the purpose of deceiving, as this deponent believes, passengers entering into and going out of said passenger station, and making them believe that they are employed by the said Union Passengr Station as its servants and agents.

This deponent further says that the interferences by the said defendants with the proper ingress and egress to said station and obstruction on said sidewalk in front of the main entrance to said Union Passenger Station occurs on the arrival of every through, local and suburban train each and every day.

This deponent further says that it is the custom of the defendants who enter the Union Passenger Station at its main entrance to solicit passengers at the stairs leading from the track platform to Canal Street by calling out in a loud and boisterous manner, "Cabs and carriages here," and when one of said defendants secures a customer, he immediately reaches the top of the stairs at the main entrance, rushes out on the sidewalk in front of the said main entrance, and waves a handkerchief as a signal to some other of the defendants standing north of said main entrance and on Canal Street in front the said Union Passenger Station, to drive his cab or carriage to the main entrance for said passenger; that the manner in which these defendants conduct themselves in soliciting said passengers, as in last paragraph mentioned, greatly interferes with the ingress and egress of said passengers to and from said main entrance to the Union Passenger Station, and prevents said passengers from using their own

discretion in procuring a conveyance suitable to themselves, and the manner in which the said defendants rush through the crowd of passengers entering and leaving said station at its main entrance
38 not only interferes with them, but is dangerous to them by the way in which said defendants jolt against and shove about and otherwise interfere with said passengers and is a great and constant damage to said station property and facilities.

THOMAS J. BARRY.

Subscribed and sworn to before me, this 1st day of March, A. D. 1902.

JAMES STILLWELL,
Notary Public.

[SEAL]

(Endorsed) Filed March 3, 1902, S. W. Burnham, Clerk.

AFFIDAVIT OF JACOB FREUND.

United States of America,
Northern District of Illinois,
Northern Division,

IN THE CIRCUIT COURT OF THE UNITED STATES,

For the Northern District of Illinois,

Northern Division.

Pennsylvania Company,
vs.
Harry Donovan, *et al.*

39 Jacob Freund, being first duly sworn, on oath deposes and says that he resides at 186 North Carpenter Street in the City of Chicago, Cook County, Illinois, and is employed at the Union Passenger Station on Canal Street in said City of Chicago as Depot Passenger Agent for the Chicago, Milwaukee and St. Paul Railway Company; that he has been so employed for the past twenty years; that his duties in and about said passenger station consist of giving directions to and assisting passengers who arrive at and depart from said passenger station upon the trains of the Chicago, Milwaukee and St. Paul Railway.

That part of his duties aforesaid consists of aiding passengers arriving at said passenger station upon through or interstate trains

Jacob Freund. 1902. of the said railway company, and in cases where the said passenger or passengers hold a coupon ticket entitling them to a free ride from said Union Passenger Station in said City of Chicago, to another railroad station, it is the duty of this affiant to see that such passenger or passengers reaches the proper conveyance and the one in which he is entitled to ride without paying an additional fare upon the coupon which said passenger holds.

This affiant further states that in carrying out his duties in and about said station he is in the main entrance of said station and upon the sidewalk immediately in front of the main entrance, going up and down the main stairs leading from the track platform to the main entrance of said station, and sees all of the defendants herein a number of times each day; that he knows all of said defendants by sight and most of them by name.

This affiant further states that the said defendants congregate in and about the main entrance to said Union Passenger Station in groups of from ten to twenty men; that when so congregated in and about said main entrance they interfere greatly with passengers arriving at and departing from said station in their free ingress to and egress from said station; that the main entrance to said station consists of three doors each having a width of about five feet, and most of the passengers arriving at and departing from said stations pass through the main entrance and that the said defendants while congregated in and about the said main entrance interrupt and interfere with the free ingress and egress of the passengers to said station, greatly to the annoyance and inconvenience of said passengers, and of this affiant and other employes of said station.

This affiant further states that the said defendants have adopted a system of securing passengers for their vehicles whereby two or more of their number enter the said passenger station and solicit in a loud and boisterous manner for passengers; that when one of them secures a passenger he rushes out on the sidewalk in front of the station waves his hand wildly about his head in an endeavor to attract the attention of some of his confederates who are stationed upon the hack stand on the east side of Canal Street and about one block north of the main entrance to said station.

This affiant further states that the defendants while congregated in groups about the entrance of said station, jostle each other about, talking in a noisy and loud manner and thereby cause great annoyance to the passengers arriving at and departing from said station.

This affiant further states that some of the said defendants who enter the main entrance of said station to solicit for passengers

have provided themselves with a uniform consisting of a cap around which are bands of gold braid and upon which are the words, "Cab Agt.", and this affiant believes that the said defendants have so adopted this uniform for the purpose of misleading passengers who enter into and depart from said station, and make them believe that the said defendants are the servants and agents and in the employ of the said Union Passenger Station; and your affiant believes that many of the passengers arriving at and departing from the said station are lead to believe that these defendants are employed by the said Union Passenger Station, and that the said passengers employ the said defendants because they think they are so employed in the Union Station.

This affiant further states that he knows of one instance where passengers who have held a coupon ticket entitling them to a free ride from the Union Passenger Station to the Illinois Central
41 Depot, have been taken in hand by some of the said defendants under the belief that they were in the employ of the said Union Passenger Station and operated the line of carriages in which they were entitled to a free ride from the said Union Passenger Station to the Illinois Central Station in the City of Chicago; that in this instance the defendants mislead and made the said passengers think that they were getting into the conveyance or conveyances in which they were entitled to a free ride to said Illinois Central Station, and that after carrying the said passengers to the said Illinois Central depot, the said defendants forced them to pay for their ride in the said conveyance which they operated.

JACOB FREUND.

Subscribed and sworn to before me, this 3 day of March, A. D. 1902.

CLABURN S. JONES,
[SEAL] *Notary Public.*

(Endorsed) Filed March 3, 1902. S. W. Burnham, Clerk.

AFFIDAVIT OF JAMES P. ZEIGLER.

United States of America,
Northern District of Illinois,
Northern Division,

IN THE CIRCUIT COURT OF THE UNITED STATES,

For the Northern District of Illinois,

Northern Division.

Pennsylvania Company
vs.
Harry Donovan, *et al.*

42 James P. Zeigler being first duly sworn on oath, says that he resides at 205 South Sangamon Street, in the City of Chicago, County of Cook and State of Illinois; that he is now and has been for three years last past employed by the Union News Company, in charge of its stand upon the main floor of the Union Passenger Station, located upon Canal Street between Adams and Madison streets in said City of Chicago.

Affiant further states that in going to and from his work he passes through the main entrance of said Union Passenger Station upon Canal Street, many times during every day; that said entrance consists of three doors each about five feet in width.

Affiant further states that he knows by sight most of the cab men and expressmen who have their cabs stationed upon the hack stand upon Canal Street immediately south of Madison Street, and who solicit for passengers and baggage within the main entrance to said passenger station, and upon the sidewalk immediately in front of the same.

Affiant further states that upon many occasions he has seen from twelve to twenty cab men and express men congregated upon the sidewalk immediately outside of the main entrance of said passenger station and solicit for passengers inside of the said station.

Affiant further states that said cab men have adopted a system whereby two or more of their number enter into said passenger station and solicit for customers from the passengers arriving upon the incoming passenger trains; that when one of the said cabmen secures a passenger, he rushes out upon the sidewalk immediately in front of the main entrance of said station, waves his hands wildly about his head in an endeavor to signal to one of his confederates

who has his hack or carriage upon the hack stand upon Canal Street about a block north of said main entrance, so that said hackman will drive his cab or carriage up to the station entrance and receive the passenger which has been secured by said solicitor.

43 Affiant further states that the hackmen who so entered the said passenger station have provided themselves with uniforms; that they wear caps having bands of gold braid about them and upon which there are inscribed the words, "Cab Agent". This affiant believes that by the wearing of said uniforms many passengers arriving from the incoming passenger trains in said passenger station are mislead and made to believe that these solicitors are employed at said Union Passenger Station by the complainant herein and that it is their duty as such agents to see to the welfare of all incoming passengers.

Affiant further states that the said defendants so stationed in and about the main entrance to said passenger station soliciting for passengers, conduct themselves in a noisy and boisterous manner; that upon one occasion he has seen two of said cab men engaged in a fight with horse whips a short distance north of the main entrance to said station.

This affiant further states that in the performance of his duties as agent for the Union News Company, he is frequently obliged to leave his stand which is at the north end of the main waiting room of said passenger station and go to the stock room of said News Company which is at # 112 Canal Street, and just north of the main entrance of the Union Passenger Station; that in so going to said stock room he is obliged to go out of the main entrance of said depot. Affiant further states that he is frequently blocked and unable to make his way through the main entrance of said station because of the number of hackmen, cabmen and express-men congregated in and about said main entrance.

J. P. ZEIGLER.

Subscribed and sworn to before me, this 1st day of March, A. D. 1902.

JAMES STILLWELL,
[SEAL] *Notary Public.*

(Endorsed) Filed March 3, 1902, S. W. Burnham, Clerk.

44 **AFFIDAVIT OF PATRICK McSHANE.**

United States of America,
Northern District of Illinois,
Northern Division.

IN THE CIRCUIT COURT OF THE UNITED STATES,

For the Northern District of Illinois—

Northern Division.

Pennsylvania Company,
vs.
Harry Donovan, *et al.*

45 Patrick McShane, being first duly sworn, states that he resides at Nnmber 36 Pearce Street, in the City of Chicago, Cook County, Illinois and that he is now and has been for more than five years last past employed by the Frank Parmalee Company as collector of tickets at the Union Passenger Station in the City of Chicago.

This affiant further states that his duties in and about said passenger station consist of directing passengers who arrive at the said passenger station holding through tickets to the various hotels in said city and to various coaches and omnibuses conveying said passengers to other passenger stations in the said City of Chicago, so that they may have a free and uninterrupted passage through said City of Chicago, to which they are entitled under the tickets which they have purchased at the starting point of their journey, and the coupon which they have in their possession entitling them to a ride from the Union Passenger Station to a certain other depot in the said City of Chicago.

Affiant further states that in the performance of his duties as aforesaid, he is in and about the main entrance to the said passenger station every day in the year and it is necessary for him to go up and down the stairs at the main entrance to said depot upon Canal Street a great many times each day; that while in the discharge of his duties as aforesaid, he frequently meets many, if not all, of the defendants herein; that he knows all of them by sight and many of them by name; that nearly all of the said defendants are cab-drivers or expressmen, and stand with their cabs or express wagons on the east side of Canal Street between Madison and Adams Streets and in front of the Union Passenger Station.

This affiant further states that said defendants form into groups of from twelve to twenty men in front of the main entrance to said passenger station, and some of them enter said station at the main entrance in twos and threes for the purpose of soliciting passengers for their hacks and carriages, and that when formed into such groups they are loud and boisterous in their language, and frequently take hold of passengers and their baggage in their attempts to solicit their custom for their hacks or carriages, and in that way greatly annoy, embarass and harass passengers arriving at and
46 departing from said Union Passenger station on through trains, as well as passengers from local and suburban trains.

This affiant further states that the main entrance to said passenger station consists of three doors, each having a width of about five (5) feet; that nearly all of the passengers arriving at or departing from the said Union Passenger station pass through the said main entrance; that when the said defendants congregate in groups in and about the said main entrance they greatly interfere with the free ingress and egress of all passengers arriving at or departing from said Union Passenger Station.

This affiant further states that he knows of many cases where passengers have arrived at said passenger station from through and interstate passenger trains and have held coupons in their possession entitling them to a free ride from the Union Passenger Station to some other depot or station in the said City of Chicago; that some of the defendants herein have solicited the patronage of the aforesaid passengers and have endeavored to enduce them to ride in their hacks or cabs to the respective passenger stations which are their destinations, but after the passengers had found that they were not entitled to a free ride in the cab or carriage belonging to the said defendants, they have refused to ride with them and have returned to the Union Passenger Station to secure a ride in the conveyance in which they were entitled to ride free; that in many instance this has caused great delay and inconvenience to the passengers and has been the cause of their missing the train that they desired to reach in order to make connections, thereby causing great damage, delay and annoyance to said passengers, because in many cases they would have to stay in said City of Chicago as much as twenty-four hours before making the trains they desired to make.

This affiant further states that the hackmen who enter said station have provided themselves with uniforms; that they wear caps around which are bands of gold braid and upon which are the letters "Cab Agt.," and as this deponent believes, the said defendants have provided themselves with the said uniforms and caps for the purpose

of misleading and deceiving passengers arriving at and departing from said passenger station into the belief that they are employed by the said Union Passenger Station as its servants and
47 agents.

This affiant further states that he knows of many instances wherein the defendants have forcibly taken hold of the baggage of passengers arriving at said station, and have thus endeavored to persuade them to become patrons for their coaches or cabs; that in many instances they take hold of the baggage of the passenger coming up the main stairs of said station and peremptorily say to them, "Come along."

This affiant further states that he knows of one instance which happened upon January twenty-fourth last, wherein a passenger arrived at said passenger station and was met at the entrance thereof by one of the defendants, a hackman named Murphy, who said "Cab"?, to which the passenger replied, "I want to go to the Northwestern Depot". Murphy then grabbed hold of the passenger's satchel and said, "Come along with me." This affiant then said, "The passenger has a ticket which entitles him to a free ride to the Northwestern Depot." Murphy thereupon became very abusive and used foul language to this affiant, whereupon this affiant was obliged to call city police officer Gibbons and compel him to release the baggage which the said Murphy had and return it to the passenger.

This affiant further states that he knows of one other instance which happened upon March first, 1902, wherein Clara Metzer, a passenger, arrived upon Chicago, Burlington and Quincy Railway train about nine thirty-five in the morning, that she was going to Sharon, Pennsylvania, over the Erie Railroad, and had in her possession a coupon which entitled her to a free ride in a coach or omnibus from the said Union Passenger Station to the depot of the Erie Railroad in the said City of Chicago.

This affiant further states that he saw the said Clara Metzer when she came up the stairs leading to the main entrance of said passenger station, and from his observation of her he was of the opinion that she was a very respectable young woman; that when she reached the top of the stairs leading from the said main entrance to the track platform, she was accosted by a hackman, by name Albert Riley, who is the defendant herein, who grabbed hold of her baggage and said to her in a commanding voice, "Come along."

48 This affiant further states that from the appearance and action of said Clara Metzer, he believed she had a ticket which entitled her to a free ride in a cab or omnibus to some other passenger station in the City of Chicago, as he saw her looking about as if for some carriage or cab; that he asked said Clara Metzer if she had a

ticket to some other station, but she was so confused that she did not reply to his question, but when the said Albert Riley told her in a commanding voice to Come along, she went out of the station with him, that she went with the said Riley to one of the hacks or cabs standing upon the said hack stand about one block north of the main entrance to said passenger station, that she thereupon presented her ticket to the said Riley, and when the said Clara Metzer found that she could not ride free in the carriage to which she had been brought by the said Albert Riley she refused to ride with him, and returned to the Union Passenger Station and there secured a ride in the coach in which she was entitled to ride.

This affiant further states that when the said Clara Metzer returned to the Union Passenger Station after going out of the door thereof with the said Albert Riley, this affiant asked her why she did not reply to his question as to whether or not she had a ticket, and she then stated that she was so confused by the loud noise and boisterous conduct of the hackman in and about said station that she could not reply.

This affiant further states that while the said hackman are grouped in and about the main entrance to said passenger station, said defendants act noisily and boisterously, telling stories and jostling each other about, and in this way greatly interfere with the free ingress and egress of passengers in and about said main entrance; that most of the defendants, if not all of them, smoke and chew tobacco, and expectorate about the said main entrance and upon the sidewalk immediately in front thereof, thereby causing great filth and dirt to collect, to the great annoyance and damage to the dresses of all ladies and passengers finding it necessary to use said main entrance.

49 This affiant further states that the formation of such dirt and filth subjects the complainant to loss and damage for injury to the clothing and wearing apparel of ladies and others on account of and by reason of the filth so accumulated by the said defendants in and about said main entrance.

This affiant further states that the said defendants in carrying on their business as herein described interfere with and prevent the employees of the Union Passenger Station from carrying out their duties to the traveling public and thereby cause damage to the Union Passenger Station and its property.

PATRICK MCSHANE.

Subscribed and sworn to before me, this 1st day of March, 1902.

JAMES STILLWELL,
Notary Public.

[SEAL]

(Endorsed) Filed March 3, 1902, S. W. Burnham, Clerk.

AFFIDAVIT OF EDWARD J. NAYLOR.

United States of America,
Northern District of Illinois
Northern Division.

IN THE CIRCUIT COURT OF THE UNITED STATES,

For the Northern District of Illinois—

Northern Division.

Pennsylvania Company
vs.
Harry Donovan, *et al.*

50 Edward J. Naylor, being first duly sworn, states that he is passenger agent of the Chicago and Alton Railway Company, stationed at the Union Passenger Station, Chicago, and has acted as such passenger agent at said station for the past eighteen months and is still acting in said capacity.

This deponent further says that he is acquainted by sight with all of the defendants to this suit and sees them several times each day at the Union Passenger Station on their cabs or carriages which stand on the east side of Canal Street between Madison and Adams Streets and in front of said Union Passenger Station.

That it is necessary for this deponent, as such passenger agent, to be in attendance at said depot daily throughout the year, and it is necessary for him in the discharge of his duties to frequently enter into and pass out of the said Union Passenger Station by way of the main entrance thereto; that he has on numerous occasions, and almost daily for sometime past, seen the defendants form groups of from eight to ten men or more on the said sidewalk in front of and in the main entrance to said Union Passenger Station.

This deponent further says that the defendants are congregated together in groups for the purpose of soliciting passengers who arrive at the said Union Passenger Station on through and interstate passenger trains, as well as local or suburban passenger trains; that in soliciting said passengers, the said defendants do so in a very loud and boisterous manner, using all the persuasion that they are capable of, even to the extent of taking hold of a passenger's baggage and in that way inducing him or her, as the case may be, to become a customer and to employ said defendant or defendants to carry him or her to their destination;

That numbers of passengers who arrive on through trains, have tickets to which are attached coupons entitling such passenger to transportation from the Union Passenger Station to some other railway station in said City of Chicago in the conveyance or vehicle owned, used and operated as indicated on said coupon attached to such railway ticket.

51 This deponent further says that he has seen and is aware that these defendants have been in the habit of soliciting such passengers for their own cabs and carriages, notwithstanding that the passenger had such coupon ticket entitling said passenger to transportation free of charge to some other depot in said city; and that these defendants, after soliciting said passenger and inducing him by every means in their power to take one or more of their carriages or cabs, and finding out that such passenger had a coupon ticket, would then tell such passenger or passengers that they could not carry them on that transportation; it would then be necessary for such passenger to make further inquiries and find out in what way the coupon attached to said ticket could be made available and used.

This deponent further says that the conduct of the defendants in this respect has been the means of annoying and harassing passengers who arrive on said through trains, sometimes causing them to lose the proper connection with other through trains, so that the passenger would be delayed in arriving at his or her destination.

This deponent further says that the defendants, in forming into groups as they do upon the sidewalk and entrance to the said Union Passenger Station, obstruct said sidewalk in front of the main entrance thereto; and also obstruct the entrance itself, and cause great inconvenience to passengers entering and leaving said Union Passenger Station by way of the said main entrance, and prevent free and uninterrupted ingress and egress to and from said station.

This deponent further says that two or three of said defendants will enter the main entrance to the said Station, and as passengers from through and suburban trains are on their way out of said station, interview them on the stairs and inside of the main entrance to said Station, for the purpose of securing the fare; that when they do secure a customer in this way, one or more of them will in a rapid way either run or walk quickly to the outside of said Union Passenger Station and wave a signal to a confederate or other defendant to bring up his cab or carriage to the main entrance to said Union Passenger Station.

52 Said deponent further says that the defendants who usually enter said Union Passenger Station are equipped with a sort

of uniform consisting of a cap labeled "Cab Agent," that said so-called uniform is misleading to the passenger or passengers arriving at said Union Passenger Station, and intimates to them that these defendants are persons employed at the Union Passenger Station for the accommodation of passengers on through and other trains, and to show them how to use the coupons attached to their through tickets, and in this way interfere with and interrupt the business and mislead the passengers who arrive at said station upon the trains of the different roads entering said passenger station.

This deponent further says that these defendants, or some of them, form themselves into a group or groups at the main entrance to said passenger station, tell jokes and stories, jostle each other about, expectorate tobacco juice on the floor of the said main entrance to said passenger station, and render it in a filthy and unhealthy condition, and make it very inconvenient and objectionable to lady passengers who arrive at and depart from said Union Passenger Station.

EDWARD JOHN NAYLOR.

Subscribed and sworn to before me, this 1st day of March, A. D. 1902.

JAMES STILLWELL,
Notary Public.

[SEAL.]

(Endorsed) Filed March 3, 1902. S. W. Burnham, Clerk.

AFFIDAVIT OF PATRICK J. TWOHEY.

United States of America,
Nortern District of Illinois,
Northern Division.

IN THE CIRCUIT COURT OF THE UNITED STATES,

For the Northern District of Illinois,

Northern Division—

Pennsylvania Company,
vs.
Harry Donovan, *et al.*

53 Patrick J. Twohey, being first duly sworn on oath deposes and says that he resides at 2720 South 42nd Court, in the City of Chicago, County of Cook and State of Illinois; that he is employed by the Parmelee Transfer Company, as Collector and has

been so employed for a period of twelve years and is still employed by said company.

This deponent further says that he is now and has been for the last three years stationed at the Union Passenger Station as Collector for the Parmelee Company; that part of the business of the said Parmelee Company is to transfer passengers arriving on through interstate passenger trains on the roads entering the Union Passenger Station, from the said Union Passenger Station to some other railroad in the City of Chicago; that attached to each railroad ticket is a coupon of the Parmelee Company entitling the passenger to free transportation from the Union Passenger Station to the connecting line as shown on the railway ticket, or to any hotel or other destination in the downtown district of Chicago.

This deponent further says that these tickets are sold by the railroads where the passenger hails from and are taken by the agent of the Parmelee Company when the passenger has been properly located in the carriage running to the place of destination of the passenger. These coupons or tickets given by the Parmelee Agents on the train had been paid for before the arrival of the passenger in Chicago, and are not accepted by any other transfer company, cab or carriage owner or driver in the City of Chicago in lieu of fare, and are only good upon the transfer lines of the Parmelee Company.

This deponent further says that he is acquainted either personally or by sight with all of the defendants to this suit; that they are cab and carriage drivers and owners of cabs and carriages or expressmen and ply their avocation principally at the Union Passenger Station in Chicago, and that in the course of their business they form in groups of from eight to twenty or more upon the sidewalk in front of and inside the door of the main entrance to the Union Passenger Station at Canal Street; that in plying their said avocation they do so in a loud, boisterous and ungentlemanly manner;
54 that when they find a passenger with a railway coupon entitling the passenger to a transfer by the Parmelee Company, they induce, if possible, said passenger to take conveyance in one of their cabs or carriages.

This deponent further says that he has seen passengers solicited by the defendants or some of them who had Parmelee coupons and says that said passengers were induced to go to the carriage of the defendant or defendants when there offer their coupon as fare. The defendant or defendants would then, if possible induce the passenger to take passage in their cab or carriage and if they could not do that, the passenger would leave the cab or carriage of the defendant and apply for transportation to the Parmelee agent.

In some cases the course pursued by the defendants has caused the passenger annoyance and delay and prevented the said passenger from making proper connection with some other line or keeping an appointment at some destination in the City, and in this way passengers are frequently annoyed, interrupted and prevented from arriving at their destination at the proper time.

This *deponent further says that he is at the Union Passenger* Station in the course of his business abo..t ten hours every day; that frequently he has seen the defendants or some one of them in an effort to procure a customer, lay hold of a passenger, grab his or her baggage to the annoyance and great inconvenience of the passenger who did not desire to become a customer of said defendant or defendants.

This deponent further says that in forming groups and congregating themselves upon the sidewalk directly in front of the main entrance to said Union Passenger Station, obstruct and prevent the free and uninterrupted passage by passengers to and from said Union Passenger Station; that by their boisterous and ungentlemanly manner, they intimidate ladies and children in an effort to procure customers.

This deponent further says that in forming the groups they do as heretofore mentioned, they not only obstruct the free ingress and egress to and from said passenger station, but by their expectorating tobacco juice, leave the entrance in a filthy and unsanitary condition to the detriment of ladies dresses and to the great annoyance of passengers and others entering and leaving said depot.

This deponent further says that he has seen two or three or more of the defendants grab the hand baggage of a passenger and attempt to get the patronage of that passenger.

PATRICK J. TWOHEY.

Subscribed and sworn to before me, this first day of March, A. D. 1902.

JAMES STILLWELL,
[SEAL] *Notary Public.*

(Endorsed) Filed March 3, 1902, S. W. Burnham, Clerk.

AFFIDAVIT OF FRANK J. BURTON.

United States of America,
Northern District of Illinois
Northern Division.

IN THE CIRCUIT COURT OF THE UNITED STATES,

For the Northern District of Illinois.

Northern Division.

Pennsylvania Company,
vs.
Harry Donovan, *et al.*

56 Frank J. Burton, being first duly sworn, deposes and says that he resides at Number 940 Park Avenue in the City of Chicago, and that he is employed as ticket agent at the Union Passenger Station in the City of Chicago for all of the railway lines entering said station.

This deponent further says that he has been assistant ticket agent and ticket agent at said station for the past fifteen years, and is still engaged at said depot in that capacity; that as such ticket agent it is necessary for him to be on duty at said depot every day in the year.

That he is acquainted with all of said defendants, either by name or from having seen them at the said Union Passenger Station almost daily for a long time past.

This deponent further says that it is necessary for him in the discharge of his duties to pass in and out of the main entrance to said passenger station several times each day, and that on such occasions he has observed the conduct of said defendants in soliciting passengers from through, interstate and suburban trains arriving at said passenger station; that the said defendants, in soliciting said passengers, do so in a loud and boisterous manner, both inside of the passenger station and on the sidewalk immediately in front of and adjoining said main entrance.

This deponent further says that he has seen on frequent occasions and continuing for a long time past the said defendants form themselves into groups of from three to twelve or more men in front of and in the main entrance to said passenger station, and while in such groups solicit passengers arriving on through, interstate and suburban or local trains, and by the formation of their groups pre-

vent the free egress and ingress of said passengers and others from and to said Union Passenger Station.

This deponent fruther says that in entering or leaving said depot himself he has been interfered with by said defendants, and it has been necessary for him at different times when these said defendants have been formed into said groups to shove them aside or to go around them to enable him to either enter or leave said depot, as occasion required.

57

This deponent further says that he has, on frequent occasions, seen passengers who desire to enter and leave said passenger station interrupted and interfered with in their free ingress and egress to and from said station and that it has been necessary for said passengers to either shove the defendant to one side, so that they could pass or pass around said defendants in some way to be discovered by said passengers.

This deponent further says that the said defendants form themselves into a group or groups at the main entrance to said passenger station, and in that way block up the said entrance, and while in such groups talk amongst themselves, tell stories, slap each other on the back, putting up their hands in the attitude of a pugilist, and in this way interfere with the ingress and egress of passengers to and from said main entrance.

And this deponent further says that most of the defendants, if not all of them, chew tobacco, expectorating in the said main entrance and upon the sidewalk immediately in front thereof, causing filth and dirt to collect, to the damage and detriment of said passenger station and the dresses of ladies and other passengers finding it necessary to use said main entrance.

This deponent further says that in connection with his said business as ticket agent, it is necessary for him to go to certain banks each day; that in doing so he carries a grip or satchel, and that on frequent occasions the said defendants, or some of them, have called out to him while he was passing from said Union Passenger Station and over the sidewalk in front of the main entrance, "Cab or carriage, Sir", and made an effort to get hold of his said grip or satchel in an endeavor to secure his custom for their said cab or carriage.

FRANK J. BURTON.

Subscribed and sworn to before me, this first day of March A. D. 1902.

JAMES STILLWELL,
Notary Public.

[SEAL]

(Endorsed) Filed March 3, 1902, S. W. Burnham, Clerk.

58 AFFIDAVIT OF JOHN HARTSOCK.

United States of America
Northern District of Illinois
Northern Division.

IN THE CIRCUIT COURT OF THE UNITED STATES,

For the Northern District of Illinois,

Northern Division.

Pennsylvania Company
vs.
Harry Donovan, *et al.*

John J. Hartsock, being first duly sworn, states that he resides at # 976 So. Spaulding Avenue in the City of Chicago, Cook County, State of Illinois, and is now and has been for the past eight years employed as Depot Passenger Agent by the Chicago, Burlington and Quincy Railway at the Union Passenger Station on the East Side of Canal Street, and between Adams and Madison Street in the City of Chicago.

This affiant further states that his duties in and about the Station consist of giving directions to and assisting passengers who arrive in and depart from said Union Passenger Station upon through or interstate, local and surbuban trains of the Chicago, Burlington and Quincy Railway; that part of his duties as such Depot Passenger Agent consist in looking after passengers who arrive in said station upon trains of the said Chicago, Burlington and Quincy Railway Company and have in their possession coupon tickets entitling them to a free ride upon a coach or omnibus from said Union Passenger Station to other railroad depots or stations in the City of Chicago.

This affiant further states that in the performance of his said duties as hereinbefore set forth it is necessary for him to be in and about the main entrance to said station and to go out upon the sidewalk in front of said station a great many times in each day; that when in discharge of his said duties he comes in contact with and meets all or a great many of the defendants in this cause at different times in each day that he is well acquainted with said defendants by sight; that nearly all of said defendants are cab drivers or expressmen who stand with their hacks or carriages on the east side of Canal Street between Madison and Adams Streets and in front of the said Union Passenger Station.

This affiant further states that said defendants form in groups consisting sometimes of as many as twenty men on the sidewalk in front of the main entrance of the Union Passenger Station and some of them enter said station at the said main entrance and solicit passengers for their hacks and carriages; that when formed into said groups they are loud and boisterous in their language and sometimes lay hold of passengers and their baggage in their attempts to solicit their custom and in that way they greatly annoy, inconvenience and embarrass the passengers arriving at and departing from said Union Passenger Station.

This affiant further states that the main entrance to said Union Passenger Station consists of three doors, each being about five feet in width; that nearly all of the passengers arriving at or departing from said Union Passenger Station pass through the said main entrance that when the said defendants gather in groups in and about the main entrance to said depot, they greatly interfere with the free ingress and egress of all passengers arriving and departing from said passenger station.

This affiant further states that he knows of one instance where two old ladies arrived in said station upon a train of the Pennsylvania Company; that as soon as they reached the top of the stairs leading from the track platform to the main entrance some of the defendants seized hold of their baggage and rushed out upon the sidewalk with it and when upon the sidewalk started to barter with them in an endeavor to secure them as passengers for their conveyances.

This affiant further states that the defendants who enter the main entrance of the said Station for the purpose of soliciting passengers have adopted a uniform consisting of a cap around which there are bands of gold braid and upon which there are inscribed the words "Cab Agent", and this affiant believes that the defendants have adopted this uniform and cap for the purpose of misleading and deceiving passengers who arrive at and depart from said passenger station, and make them believe that the said defendants are employed by the said Union Passenger Station as its servants and agents.

This affiant further states that said defendants form themselves into groups at the main entrance of said passenger station and in that way block up the main entrance thereto, and while in such groups talk and laugh among themselves, tell stories to each other, jostle each other and in this way interfere greatly with the free ingress and egress of said station; that a great many if not all of said defendants chew tobacco and expectorate in and about the said main entrance and upon the sidewalk immediately outside thereof, causing a great amount of filth and dirt to collect,

greatly to the annoyance of all ladies and other passengers who are obliged to use the main entrance to said passenger station.

That said defendants, in conducting their business as above described, interfere with this affiant in the performance of his work in and about said passenger station, and prevent the employes of the Union Passenger Station from properly performing their respective duties to the traveling public, and thereby cause damage and injury to said Union Passenger Station and its property, and that the said defendants by forming in groups and congregating in and about the main entrance to said station, block the entrance and in that way cause damage and injury to the said complainant and its use of the said Union Passenger Station.

JOHN J. HARTSOCK.

Subscribed and sworn to before me, this 1st day of March, A. D. 1902.

JAMES STILLWELL.
Notary Public.

[SEAL]

(Endorsed) Filed March 3, 1902, S. W. Burnham, Clerk.

AFFIDAVIT OF WILLIAM A. BOATMAN.

United States of America,
Northern District of Illinois
Northern Division.

IN THE CIRCUIT COURT OF THE UNITED STATES,

For the Northern District of Illinois

Northern Division.

Pennsylvania Company
vs.
Harry Donovan, *et al.*

61 William A. Boatman, being first duly sworn, on oath deposes and says that he resides at # 161 Locust Street in the City of Chicago, Cook County and State of Illinois; that he is Assistant Train Master of the Pennsylvania Company at Chicago and has been employed by said company during the past twenty years and is still engaged by said Company; that his office as Assistant to Train Master is in the Union Passenger Station, Chicago, on the second floor of

said building; that in going to and from his said office it is necessary to go by way of the main entrance to said Union Passenger Station; that he enters and passes out of the Union Passenger Station byway of the main entrance on Canal Street a great many times each day; that in doing so this deponent says he has seen and knows all of the defendants to this suit either by name or reputation; that he has seen them plying their avocation as cab or carriage drivers upon the sidewalk in front of and also inside the main entrance of said Union Passenger Station, and for the purpose of so doing they form in groups of from eight to twenty men, this deponent having counted as many as eighteen in one group, and while in such group or groups they ply their avocation in a loud and boisterous and ungentlemanly manner.

This deponent further says that some of said defendants enter said passenger station at its main entrance and stand inside the main entrance and attempt to ply their avocation and do ply their avocation in said building in a rough, reckless and intimidating way by taking hold of passengers baggage and using every means in their power to induce a passenger or passengers from through interstate passenger trains or local and suburban trains to employ their services.

This deponent further says that in their reckless and ungentlemanly manner of procedure they intimidate women and children causing them great annoyance and inconvenience. Only a few nights ago this deponent saw a gentleman passenger walk from the waiting room of said Union Passenger Station to the sidewalk at the main entrance to said station; as soon as he reached the door
62 of the main entrance some of the defendants called out to him "carriage, Sir." "Do you want a carriage?" The man replied in a gentlemanly manner—"No" several times. These defendants not satisfied with the reply given by the gentleman in question gathered around him and all ridiculed and annoyed the man and treated him in a very humiliating way.

This deponent further says that the said defendants by the formation of a group or groups that they form in the main entrance of said passenger station and on the sidewalk immediately in front thereof, annoy, harass and interrupt passengers in their free ingress and egress to said passenger station and prevent the free and uninterrupted passage for passengers and others to and from the said Union Passenger Station.

This deponent further says that some of the defendants appear at the main entrance and inside the station building in a uniform consisting of a cap upon which is shown in plain letters "Cab Agent," and hold themselves out to passengers as representing a

cab line, misleading passengers by attempting to give them information with reference to the arrival and departure of trains.

This deponent further says that a number of passengers have been mislead by the information given them by these defendants and have been put to great annoyance and inconvenience by means thereof.

This deponent further says that the defendants are in the habit of soliciting passengers from through interstate passenger trains who have their tickets to which is attached a coupon entitling the holder thereof free transportation from the Union Passenger Station to the Station of the connecting line shown upon their railway ticket by means of the coupon attached to said ticket, and which coupon shows the way in which and by whom the said passenger is to be transferred from the Union Passenger Station to the Station of the connecting line.

This deponent further says that these passengers who are mislead in that way are compelled to pay for the transfer from the Union Passenger Station to some other Railroad Station and that frequently complaints are made on account thereof.

This deponent further says that these defendants in forming
63 the groups they do upon the sidewalk in front of the main entrance of said Union Passenger Station and in the main entrance thereto and inside of the building, joke with one another, jostle each other around and thus interfere with passengers and others who are necessarily passing in and out of the main entrance and that these defendants expectorate tobacco juice upon the floor of the said Union Passenger Station at its main entrance and cause filth and dirt to congregate there and make it disagreeable for ladies who have occasion to use said Union Passenger Station in passing in and out of said main entrance to the detriment and danger of soiling their dresses by the tobacco juice and filth congregated upon the floor of said Union Passenger Station.

This deponent further says that he is aware of the fact that ladies who have frequently to use said Union Passenger Station do now when arriving at said station upon a train of some railway entering said passenger station, go to the top of the stairs leading from the track platform to the main entrance of said passenger station and instead of going through the group or crowd of defendants gathered there, will turn and pass through the waiting room of the said Union Passenger Station leave the station by means of an exit at the south end thereof, rather than pass through the group or groups of defendants formed in said main entrance of said Union Passenger Station.

WILLIAM A. BOATMAN.

Subscribed and sworn to before me, this 1st day of March, A. D. 1902.

JAMES STILLWELL,
[SEAL] *Notary Public.*

(Endorsed) Filed March 3, 1902. S. W. Burnham, Clerk.

AFFIDAVIT OF GEORGE W. METZGER.

United States of America,
Northern District of Illinois,
Northern Division.

IN THE CIRCUIT COURT OF THE UNITED STATES,

For the Northern District of Illinois,

Northern Division.

Pennsylvania Company,
vs.
Harry Donovan, *et al.*

64 George W. Metzger, being first duly sworn, on oath states that he resides at Number 32 Walnut Street in the City of Chicago, County of Cook and State of Illinois; that he is employed by the Pennsylvania Company as its passenger agent, and has been so employed for the past thirty years, and is now stationed at the Union Passenger Station in said City of Chicago.

Affiant further states that his duties compel him to be on duty at said passenger station every day in the year from about seven-thirty in the morning until five-thirty in the evening, or later; that he is acquainted with all of the defendants to this suit, either personally or by reputation and sight; that as such passenger agent it is his duty to stand at the top of the main entrance to said passenger station on the arrival of all through passenger trains arriving at said station, to direct all through passengers who may have occasion to stay over a short time to await trains to the ticket office, and give them such information as is necessary to enable them to make the connection that they intend and desire to make to continue their passage.

This deponent further says that it is also part of his duties to take charge of and look after foreigners who either arrive from

certain steam-boat connection in the east, or are in numbers, or singly, returning to or going abroad, to see that they are properly cared for while at said station, and sent from the Union Passenger Station to the railroad depot called for by the coupon attached to the railway ticket which they have, so that they can make their proper connection and reach the steam-boat landing in time to take the boat called for by their transportation.

This deponent further says that frequently passengers who can not speak English fall into the hands of the defendants hereto, and are carried in their cabs or carriages to some other railway station and made to pay, as he is informed and believes, for such transportation, the defendants well knowing that the passenger or passengers so carried by him have in their possession a coupon entitling them to free transportation from the Union Passenger Station to some other connecting railway station, as shown by said railway ticket with coupon attached.

This deponent further says that he has heard passengers complain bitterly of the treatment received by them from the defendants in taking and accepting the coupon attached to said railway ticket, and in this way said defendants cause great annoyance to through passengers arriving at said Union Passenger Station destined to go to a point outside of Chicago by some other road, and where it is necessary for the passenger to be transferred to some other passenger station.

This deponent further says that the defendants hereto congregate in groups of from eight to twenty upon the sidewalk in front of and in the main entrance to the Union Passenger Station for the purpose of soliciting patronage for their cabs and carriages, and in soliciting said patronage they do so in a very loud and boisterous maner, and in this way annoy, harass and intimidate passengers, especially women who arrive at said Union Passenger Station, upon through, interstate and local or suburban passenger trains.

This deponent further says that the said defendants enter the main entrance to said Union Passenger Station, two or three at a time, for the purpose of soliciting patronage; that in doing so they jostle against and interfere with the free ingress and egress or passengers to and from said station.

This deponent has frequently seen said defendants, or some of them, lay hold of passengers, grab their baggage, to the annoyance and intimidation of said passenger and to the hindrance of said passenger in his or her free egress from said station, and rush in a violent manner from the sidewalk or from the place where they were standing at the main entrance to sad passenger station several

George W. Metzger, filed 1902.

feet to the top of the stairs where said passenger would arrive in his or her exit from said station.

66 This deponent further says that these defendants not only obstruct the sidewalk in front of the main entrance to said Union Passenger Station in their endeavor to solicit patronage, but also obstruct the main entrance to said Union Passenger Station between the top of the stairs leading from the track platform to the door of said passenger station, a distance of about ten or twelve feet, and prevent the free egress and ingress of passengers to and from said Union Passenger Station.

This deponent further says that latterly and within the last month some of the defendants appear at the main entrance to the Union Passenger Station and inside the same, in a uniform consisting of a cap of imitation gold braid upon it and the words "Cab Agent" in plain letters upon the same, and at night it has been the custom recently of some of the defendants to appear within said entrance dressed in a uniform consisting of a coat with brass buttons and a cap which is shown in plain letters the words "Cab Agent" and these defendants in the uniform mentioned solicit patronage from the through passengers arriving at said Union Passenger Station by calling out to them "Cab or carriage line here," and at once upon the arrival of the passenger at the top of the stair way at the main entrance to the Union Passenger Station attempt to take from the passengers whatever baggage he or she may have and deliver the passenger to some other of the defendants who may be standing upon the sidewalk on the outside of the main entrance to the Union Passenger Station.

This deponent further says that in the conduct of the said defendants in this respect they mislead the passengers, annoy and harass them in their manner of soliciting patronage and on frequent occasions this deponent has found lady passengers very much intimidated and frightened at the coarse and vulgar way in which these defendants or some of them, have attempted to procure custom.

67 This deponent further says that on Thursday morning, the twenty seventh day of February, 1902, a lady passenger arrived on one of the Chicago, Burlington and Quincy Railway Company's through trains; when this lady went up from the track platform by way of the steps leading to the main exit from the Union Passenger Station, she was grabbed by one of the defendants hereto, whose name this deponent does not know, who took hold of her and hold of her satchel and did everything in his power to induce her to engage his carriage or cab; this woman was so frightened by the action and conduct of the said defendant that it was necessary for this deponent in his capacity and in accordance with his duties, to

ask her where she wanted to go, and finding that she expected some one to meet her there, this deponent directed her to a waiting room where she waited for the parties whom she expected to meet there; she told the cab man, and tried to make him believe, that she did not require his services.

This deponent further says that two of the defendants are stationed inside of the Union Passenger Station at its main entrance all day long and solicit passengers from trains who may find it necessary to attempt to leave the Union Passenger Station by way of its main entrance, and said two defendants continuously and incessantly call out their vocation, to the annoyance by their loud and boisterous calling of passengers and others who find it necessary to enter or leave the Union Passenger Station by that entrance, and especially so of timid and unprotected ladies.

GEORGE W. METZGER.

Subscribed and sworn to before me, this 1st day of March A. D. 1902.

JAMES STILLWELL,
Notary Public.

[SEAL]

(Endorsed) Filed March 3, 1902, S. W. Burnham, Clerk.

AFFIDAVIT OF ROBERT W. RICHARDS.

United States of America,
Northern District of Illinois,
Northern Division.

IN THE CIRCUIT COURT OF THE UNITED STATES

For the Northern District of Illinois—

Northern Division.

Pennsylvania Company
vs.
Harry Donovan, *et al.*

68 Robert W. Richards, being first duly sworn, states, that he is a lawyer, residing and practising his profession, in the City of Chicago, County of Cook and State of Illinois, and is a member of the firm of Loesch Bros. and Howell, attorneys, in said City.

Affiant further states that during the months of January and

February, 1902, he has either actively assisted in or conducted prosecutions of the City of Chicago against certain cabmen and hackmen, arrested for disorderly conduct for entering and soliciting for passengers in and about the main entrance to the Union Passenger Station, on Canal Street, in said City, and for violations of Sections 1524 and 543 of the Revised Code of the City.

That said sections 1524 and 543 are in words as follows:

"1524 Control of Cabs, etc., Hackmen, Cabmen, omnibus drivers, draymen, porters, runners and other persons when at or about any railroad depot or station or steamboat or canal boat landing, or other public place in the city, shall obey the commands and directions of the police officer or officers who may be stationed or doing duty on or about such depots or stations or landings or other places, for the preservation of order and enforcing the ordinances. Whoever shall refuse to obey the commands and directions of a police officer as aforesaid shall be fined not exceeding twenty dollars."

"543 Driver to Be With Vehicle. It shall not be lawful for the driver or other person having charge of any hackney coach, cab, public cart or any other vehicle mentioned in this chapter, to be off or away from any such hackney coach, cab, cart or any other vehicle while the same is moving or passing along any of the streets or avenues of said city; nor shall it be lawful for any driver of any vehicle herein mentioned to snap or flourish his whip, or to be away from his vehicle except under police regulations, or unless from necessity, nor to sit or stand about the doorsteps or platforms, or in front of of any house, store or other building, to the annoyance of the occupants thereof."

Affiant further states that upon January 15th, 1902, Walter Owen and Sanford McGill, defendants herein, were arrested for disorderly conduct in and about the main entrance to said station; that said cases were heard by Max Eberhardt, Esquire, Justice of the Peace, were continued from time to time and afterwards and upon January 31st said defendants were discharged by said Eberhardt.

That upon February 5th, 1902, Walter Owen, S. McGill and George Henry Baude, defendants herein, were arrested upon complaint of Officer Naylor, who is a special officer of said Union Passenger Station and sworn in as a police officer by the City of Chi-
69 cago, for violations of Section 1524 and 543 of the Municipal Code as aforesaid; that upon February 15th, Max Eberhardt Justice of the Peace and Police Magistrate, before whom said cases were tried, found said defendants guilty of violations of said Section 543 and fined each of them the sum of Five Dollars and costs, from which finding each of said defendants took an appeal to the Criminal Court of Cook County.

Affiant further states that upon February 15th, Walter Owen, defendant herein, was arrested upon complaint of Officer William J. Higgins, a special officer stationed at the Union Passenger Station and sworn in by the City of Chicago, for violation of said Section 543; that said case came up for hearing before Max Eberhardt, Esquire, and thereupon said Owen moved for a jury trial, which was granted. That the hearing of said case before a jury lasted some three hours and after hearing the evidence and arguments of counsel the jury returned a verdict of not guilty.

That upon February 15th, 1902, George Henry Baude and Albert Reilly, defendants herein, were arrested upon complaint of Officer Higgins for violation of said Section 543; that said cases came up for hearing before Max Eberhardt, Police Magistrate upon various continuances, February 17th, February 18th, February 20th, February 21st, February 24th. That each of said defendants demanded a jury trial and the jury in each case, being composed largely of illiterate men, gathered in from the neighboring saloons, found said defendants not guilty after hearing the evidence and arguments of counsel in the respective cases.

Affiant further states that the aforesaid prosecutions have had no effect whatever upon the said defendants in keeping them from soliciting for passengers and congregating in and about the main entrance to said passenger station and they still persist in so doing.

ROBERT W. RICHARDS

Subscribed and sworn to before me, this third day of March 1902.

EFFIE M. BROWN,
Notary Public.

[SEAL]

(Endorsed) Filed March 3, 1902, S. W. Burnham, Clerk.

70 AFFIDAVIT OF ELIZABETH GRIDLEY.

United States of America,
Northern District of Illinois,
Northern Division.

IN THE CIRCUIT COURT OF THE UNITED STATES,

For the Northern District of Illinois.

Northern Division.

Pennsylvania Company,
vs.
Harry Donovan, *et al.*

Elizabeth Gridley, being first duly sworn, on oath states that she resides at Number 288 Michigan avenue in the city of Chicago County of Cook and State of Illinois.

That she is employed by the Young Woman's Christian Association of the said City of Chicago as "Traveler's Aid" that she is stationed at the Union Passenger Station on Canal street in said city of Chicago from eight o'clock in the morning until five fifteen P. M. every day, that her duties consist in aiding young women and girls who arrive in said passenger station from all incoming trains; that she directs them to suitable boarding houses and places of employment, and aids them in every way possible.

Affiant further states that in her said employment she has become familiar with the entrances to said Union Passenger Station and that she has also become familiar and knows by sight many of the expressmen and cab and carriage drivers who solicit for passengers inside of the main entrance to said station and upon the sidewalk immediately in front thereof.

71 Affiant further states that she has frequently seen upon the sidewalk in front of said main entrance from twelve to twenty cab-drivers and expressmen soliciting for passengers and baggage; that she knows of two of said cab-drivers who come inside the main entrance of said station and solicit for passengers therein.

Affiant further states that the cabman in and about the main entrance of said station act in a noisy and boisterous manner, expectorating upon the floor inside of the said main entrance and the sidewalk immediately in front of the same, and keep the said floor and sidewalk constantly in a nasty and dirty condition.

Affiant further states that in the performance of her duties as hereinbefore set forth, she stands a short distance from the top of

the stairs leading down from the main entrance to said station, and a little to one side thereof, and as the passengers come up said stairs from incoming passenger trains, she endeavors to speak with every young girl whom she sees and whom she thinks may need her assistance.

Affiant further says that in many instances the cabmen, in soliciting for passengers, rush in front of her, block her way, and prevent her from speaking to many of the young girls with whom she desires to speak.

Affiant further says that she knows of a number of instances in which some of the hackmen and expressmen have accosted and spoken to young girls going out of said station in a loud and boisterous manner.

ELIZABETH GRIDLEY.

Subscribed and sworn to before me, this 1st day of March, A. D. 1902.

ROBERT W. RICHARDS,
Notary Public.

[SEAL.]

(Endorsed) Filed Mar. 3, 1902. S. W. Burnham, Clerk

72 AFFIDAVIT OF THOMAS P. KENNEDY.

United States of America,
Northern District of Illinois,
Northern Division.

IN THE CIRCUIT COURT OF THE UNITED STATES,

For the Northern District of Illinois,

Northern Division.

Pennsylvania Company,
vs.
Harry Donovan, *et al.*

Thomas P. Kennedy, being first duly sworn, on oath deposes and says that he resides at 914 South Homan Avenue, in the city of Chicago, County of Cook and state of Illinois; that he is employed at the Union Passenger Station as an Usherer and has been so employed for the past seven years; that he is acquainted with some of the defendants by name and with all of them by sight; that as usherer at the Union Passenger Station it is necessary for him to

frequently go up and down the stairs at the main entrance thereto from Canal street and that he does go up and down said stairs and in and out of the main entrance to said depot many times a day, his duties being performed at said depot during the day.

This deponent further says that it has been the habit and custom of the defendants to form themselves in groups upon the sidewalk in front of the main entrance to said Union Passenger Station and for some three or four or more of them to enter said passenger station at its main entrance on Canal street for the purpose of plying their avocation; that in forming said group and in entering
73 and remaining at the top of the stairs at the main entrance to the said Union Passenger Station they prevent the free and uninterrupted passage from said Union Passenger Station by passengers arriving and departing on through interstate passenger trains and local and suburban trains of the road entering said passenger station; that in plying their avocation and soliciting the patronage they do so in a loud, boisterous and ungentlemanly manner, and harass and annoy passengers who have arrived at said depot and are leaving the same by way of the main entrance by frequently laying hold of said passengers and their baggage in an effort to secure their passage, and to the annoyance and hindrance of said passengers.

This deponent further says that the said defendants forming the groups mentioned, tend to interrupt and annoy passengers during the most of each and every day, and this deponent says that when one or more of the defendants have or has secured a customer they rush out through the crowd, delaying people and interfering with their passage, and when on the sidewalk outside of the main entrance and directly opposite thereto, will signal to some one or other of the defendants stationed at the north end of the depot building and in thus rushing through the crowd trample upon the dresses of ladies and interfere with their wellfare, making it dangerous for them, and particularly for children who happen to be leaving the station at that part particular time.

This deponent further says that defendants frequently where passengers have engaged a carriage and request him to get the carriage for them, these defendants or some of them would interfere with the passengers, and attempt to induce them in a rought and ungentlemanly manner to change their order and take passage with the defendant or defendants then soliciting them, and in this way annoy, interrupt and delay the passenger while departing from said
74 station; and also says it frequently happens that where passengers arriving and holding through tickets which have cou-

pons attached entitling them to a free transfer from the Union Passenger Station to some other railroad station, hotel or destination in the downtown part of Chicago, these defendants or some of them, knowing that the passenger had or paid for transportation and held the transfer coupon, would try to induce the passenger to become his customer and take passage in his cab or carriage.

This deponent further says that he has known of numerous instances where passengers have been put to great inconvenience, trouble, delay and expense on account of the defendants hereto or some one of them inducing passengers to employ them to carry them to their destination, where these passengers have already paid for such transportation, and it was available upon presentation by said passenger of the coupon then in his or her possession.

This deponent further says that these defendants have stationed inside the main entrance to said Union Passenger Station two men who have a partial uniform consisting of a cap trimmed with imitation gold lace and upon which are the words "Cab Agt" for the purpose of soliciting patronage. These men are habitual cigarette smokers and although they have been warned by this deponent and others that it was against the rules to allow smoking in the main entrance, they still continued to do so and will not obey the rules adopted by the management and in use at the Union Passenger Station.

This deponent further states that these men ply their avocation incessantly and in a loud and boisterous manner and by their partial uniform intimate to passengers that they are there representing and authorized by the management of the Union Passenger Station and at times have mislead passengers and others by giving them wrong information with reference to the arrival and departure of trains, and also as to information asked of them with reference to the tickets held by said passengers.

THOMAS P. KENNEDY.

Subscribed and sworn to before me, this first day of March, A. D. 1902.

JAMES STILLWELL,
Notary Public.

[SEAL]

(Endorsed) Filed Mar. 3, 1902, S. W. Burnham, Clerk.

76 **AFFIDAVIT OF ANDREW NAYLOR.**

United States of America,
Northern District of Illinois,
Northern Division.

IN THE CIRCUIT COURT OF THE UNITED STATES,

For the Northern District of Illinois,

Northern Division.

Pennsylvania Company,
vs.
Harry Donovan, *et al.*

Andrew Naylor, being first duly sworn, on oath, deposes and says that he resides at #5543 Fifth Avenue, in the city of Chicago, County of Cook and State of Illinois, that he has been for the past seven years employed at the Union Passenger Station as special police officer; that he is acquainted either personally or by sight or name with all of the defendants hereto, that said defendants in plying their avocation prevent free and uninterrupted passage to and from the Union Passenger Station at its main entrance by forming in a group or groups of from eight to ten or more men, and barring the way for passengers in their entering or leaving said Union Passenger Station; that in plying their avocation they do so in a loud, boisterous and ungentlemanly manner and by harrassing and annoying the passengers who arrive at said depot upon through interstate passenger trains as well as local and suburban trains.

This deponent further says that the passengers are annoyed, interrupted and interfered with by said defendants grabbing
77 the hand baggage of said passengers and urging in a very impertinent and insistent manner the acceptance by said passengers of a conveyance driven or owned by said defendant or defendants; that said defendants or some of them are continually during the day or greater portion of each day, and especially upon the arrival of through passenger trains congregated at the main entrance, upon the sidewalk and inside the building at its main entrance, and while there ply their avocation and make it impossible for passengers to leave said station without passing through the group so made by said defendants

and being subject to the annoyance and inconvenience of persistent solicitation for patronage at their hands.

This deponent further says that the said defendants have two of their number stationed inside the Union Passenger Station at its main entrance and that these two men have a partial uniform consisting of a cap trimmed in imitation gold lace with letters plainly indicating the words "Cab Agent" that these two men ply their vocation incessantly during the day and on the arrival of the passenger trains in a loud and boisterous manner and make it a practice when passengers are coming up the steps of the main entrance to grab their baggage and insist upon becoming or engaging a cab or one horse carriage of one or more of the defendants whom they represent to the annoyance, interference and interruption and delay of the passenger to whom they are talking, and in interfering and blocking up the passage for other passengers who are about to leave said passenger station by way of its main entrance.

This deponent further says that these defendants also interfere with and prevent passengers who have railroad tickets with coupons attached entitling said passengers to free transportation from the Union Passenger Station to other railway stations or to some
78 hotel or other destination in the downtown district of Chicago, by preventing as much as possible these passengers from taking the conveyance indicated by the coupon then in their possession, and in this way delaying and annoying and interfering with the rights and privileges of the passenger.

This deponent further says that he has learned from City police officers Gibbons, Lavin and Derrig, that they had been instructed by their superior officer not to interfere with the defendants in any way and to allow them if they desired so to do to enter the Union Passenger Station free and unmolested to ply their avocation, unless they cause a disturbance.

ANDREW NAYLOR.

Subscribed and sworn to before me, this 1st day of March A. D. 1902.

EFFIE M. BROWN,
Notary Public.

[SEAL]

(Endorsed) Filed March 3, 1902, S. W. Burnham, Clerk.

79 AFFIDAVIT OF WILLIAM J. SULLIVAN.

United States of America,
Northern District of Illinois,
Northern Division,

IN THE CIRCUIT COURT OF THE UNITED STATES,

For the Northern District of Illinois—

Northern Division.

Pennsylvania Company,
vs.
Harry Donovan, *et al.*

William J. Sullivan, being first duly sworn, on oath stated that he resides at Number 1481 Central Park Boulevard, in the city of Chicago, and is employed as an usher at the Union Passenger Station situated on the east side of Canal street and between Madison and Adams streets in the city of Chicago; that he has been employed as such usher at the Union Passenger Station for a period of about four years last past, and is still so employed; that his said employment compels him to be upon duty every day in the year; that his duties in and about said passenger station consist of directing and assisting passengers arriving and departing from trains in said station.

This affiant further states that in the performance of his duties it is necessary for him to be in and about the main entrance to said passenger station to go upon the sidewalk in front of said depot to meet passengers arriving or departing from trains, and to go up and down the stairs at the main entrance to said station upon Canal street a great many times each day; that when in discharge of his duties as aforesaid he comes in contact with and meets all or a great many of the defendants in this case at different times in each day; that he is well acquainted with said defendants by sight and knows many of them by name.

That said defendants form into groups of from eight to twenty
80 men on the sidewalks in front of the main entrance to the Union Passenger Station, and some of them enter said station at said main entrance in twos and threes to solicit passengers for their said hacks or carriages; that when formed into such groups they are loud and boisterous in their language; and call out in a very loud voice, "Cab and Carriage here" in their endeavors to secure a customer, and in that way and many others they annoy and harass

passengers arriving at said Union Passenger Station on through trains, as well as passengers from local or suburban trains.

This affiant further states that the main entrance to said Union Passenger Station consists of three doors each having an opening of about five (5) feet in width; that nearly all of the passengers arriving and departing from said station upon through and interstate passenger trains, as well as local or suburban trains, leave and depart from said station through said main entrance; that when said defendants form into groups from eight to twenty men in front of the main entrance to said Union Passenger Station and in the interior of the same they obstruct the sidewalk and entrance and interfere with the ingress and egress of passengers from said station; that all of the hackmen who enter said station, as aforesaid, have provided themselves with uniforms and that they wear caps having gold braid around them and which are inscribed with the words, "Cab Agt." that said hackmen have provided themselves with said uniforms for the purpose of deceiving as this deponent believes, passengers coming into and going out of the said passenger station and making them believe that they are employed by the said Union Passenger Station as its servants and agents.

This affiant further states that said defendants have an arrangement between themselves by which two or more of their number enter the main entrance of said passenger station and solicit for passengers; that when one of them secures a passenger he rushes out upon the sidewalk in front of the main entrance to said station, waives his hand wildly about his head in an endeavor to
61 attract the attention of one or more of his confederates who have their cabs stationed upon the hack stand upon the east side of Canal street immediately south of Madison street and about one block north of the main entrance of said passenger station.

This affiant further states that said defendants form themselves into a group or groups at the main entrance to said passenger station and in that way block up the said entrance, and while in such groups talk amongst themselves, tell stories and jostle each other, and in this way interfere with the ingress and egress of passengers to and from said entrance.

That said defendants, while congregating in and about the said main entrance and upon the sidewalk immediately in front thereof cause filth and dirt to collect, to the damage of the dresses of ladies and other passengers finding it necessary to use said main entrance, rendering said station liable for such damage; That this affiant is greatly interfered with by the defendants congregated in and about said station entrance, in the performance of his duties to the travel-

ing public, and that a great many of the employes of said station are thereby delayed and interfered with in their work, to the damage of the said Union Passenger Station.

WM. J. SULLIVAN.

Subscribed and sworn to before me, this 1st day of March, A. D. 1902.

JAMES STILLWELL,
[SEAL] *Notary Public.*

(Endorsed) Filed Mar. 3, 1902, S. W. Burnham, Clerk.

82 AFFIDAVIT OF THOMAS M. GLENN.

United States of America,
Northern District of Illinois,
Northern Division,

IN THE CIRCUIT COURT OF THE UNITED STATES,
For the Northern District of Illinois—
Northern Division.

Pennsylvania Company,
vs.
Harry Donovan, *et al.*

Thomas M. Glenn, being first duly sworn, on oath states that he resides at 1172 Millard Avenue, in the City of Chicago, Illinois, that he is now and has been for some years last station master of the Union Depot or Passenger Station, located on Canal street, between Madison and Adams streets, in said City of Chicago.

This affiant further states that as such station master he has entire charge of and control over the said Union Passenger Station that said station since its construction has been used and occupied and is now used and occupied by the Pennsylvania Company, the Chicago and Alton Railway Company, the Chicago, Burlington and Quincy Railway Company; the Chicago, Milwaukee and St. Paul Railway Company and the Pittsburgh, Cincinnati, Chicago and St. Louis Railway Company, that the said passenger station is the only terminus in the city of Chicago of each of said lines of railway and through which said station they can conduct the exchange of interstate passengers and baggage, the United States mail and express parcels.

This affiant further states that the main entrance to and exits from said passenger station of your orator for all passengers arriving at or departing from said station and for all employes and the
83 public necessarily and properly using said station is on Canal street about one hundred feet north of Adams street; that substantially all the passengers arriving at said station or departing therefrom pass through said main entrance; that said main entrance is at the head of a flight of stairs leading down to and up from the station platform upon which trains arrive and depart; that said main entrance consists of a center opening the width of five feet; that practically all of the passengers coming into or leaving said station pass through the center opening of said exits from or to said station, and that upon the arrival of trains discharging their passengers the stairway leading to said door and through said openings leading to the sidewalk is densely crowded with passengers and the public passing out and the same is true also in large part throughout each day of passengers and the public passing into said station prior to the departure of trains.

That the number of passengers arriving and departing from said station in each day averages over thirty thousand (30,000) that an average of over twenty two hundred pieces of baggage are received and delivered at said station each day; that there are received and delivered at said station a daily average of over two hundred fifty tons of United States mail, and that there arrive at and depart from said station in each day two hundred fifty seven passenger trains.

This affiant further states that he is acquainted with the defendants herein, either personally, by sight or reputation, and has known them for some time past.

This affiant further states that all tickets of interstate passengers arriving at or departing from said station, known as through tickets, have attached thereto a check or coupon for conveyance through the city of Chicago to the station of any connecting line of railroad designated on such through tickets and not running
84 into or out of said passenger station, and that your orator and the said other railway corporations hereinbefore named have contracts for the use of a line of omnibuses or conveyances for the performance of the services called for by said coupons or checks, and that said omnibuses or conveyances so employed by contract form the only regular connecting line of transportation between said Union Passenger Station and the stations of other railways in the city of Chicago, and many hundreds of passengers are each day received at said station and depart from said station in omnibuses

from and to the various other railway stations in the city of Chicago.

This affiant further state that the company which has the contract for the conveyance of passengers from the said Union Passenger Station to the various other railway depots as aforesaid is known as the Frank Parmelee Company; that said company is allowed by the said Union Passenger Station to have its representatives and agents stand at the top of the stairs leading from the track platform to the main entrance of said station as hereinbefore described, for the purpose of directing passengers arriving and departing from trains to the proper conveyances to convey them to the respective depots to which they desire to go, and to which they are entitled to ride under the coupon tickets held by them; That all of the representatives, servants and agents of the said Parmelee Company are dressed in uniforms and wear caps upon which are the words "Cab Agent" so that they may be readily distinguished by passengers using said main entrance as aforesaid.

This affiant further states that most, if not all, of the defendants are cabmen or expressmen, who stand with their cabs and wagons on the east side of Canal street, between Adams and Madison streets; that said defendants congregate in groups of from ten to twenty men in and about the main entrance to said Union Passenger Station and also inside of the Union Passenger Station at its
85 main entrance for the purpose of soliciting for passengers; that when formed in such groups they greatly obstruct the ingress to and egress from said station, interfere with passengers from through, interstate and suburban trains, passing in and out of station, and prevent the said Union Passenger Station from the the full use of its said property, greatly to the damage of said station.

This affiant further states that said defendants have adopted a system of soliciting for passengers, whereby two or more of their number enter the main entrance of said station, and stand on each side of the center exit thereof as hereinbefore described; as the dense throngs of passengers pass up the main stairs leading to said entrance they advance calling in a loud and boisterous manner, "Cab and Carriage," and endeavoror by all means possible to secure passengers for their vehicles; that sometimes said hackmen and defendants lay hold of passengers and their baggage and carry it out on the sidewalk before said passengers have a chance to tell them that they do not wish to employ them that when one of said defendants gets a customers he rushes out upon the sidewalk waves his arms about his head wildly in an endeavor to attract the atten-

tion of some of his confederates who are at the nearest back stand, about one block north of said main entrance, so that such confederate will drive his cab to the main entrance and get said passenger thereby causing great damage to said Union Passenger Station and rendering it liable for any injuries that may be sustained by passengers in the dense throngs about the said main entrance, by reason of the manner in which said defendants rush about, jostle and push passengers in their endeavor to secure patronage.

This affiant further states the defendants who enter said station have provided themselves with uniforms very similar to those worn by the Parmelee agents as hereinbefore described; that the caps of said defendants bear the words, "Cab Agent," have
86 bands of gold braid about them and are made as nearly as possible to look like those of said Parmelee agents. That some of said defendants have also provided themselves with liveries or coats buttoned with large brass buttons, in imitation of those worn by the agents of said Parmelee Company.

This affiant further states that he believes these defendants have so uniformed themselves for the purpose of deceiving passengers arriving at or departing from said station and making them believe that they are the agents of said Parmelee Company, and that they represent the line of omnibuses or conveyances in which such passengers who hold coupon tickets are entitled to ride from said Union Passenger Station to some other depot or railway station in said city of Chicago, that he knows of instances where passengers have thus been mislead, have been taken in hand by some of said defendants and when they found they could not ride free upon the coupon, which they purchased at the starting point of their journey, have returned to said station, to the great delay, annoyance and inconvenience of said passengers.

This affiant further states that said defendants when congregated in and about said main entrance conduct themselves in a loud, boisterous and ungentlemanly way, tell coarse stories, laugh, slap each other on the back, jostle each other about swear, smoke and expectorate upon the sidewalk in and about said main entrance, greatly to the annoyance of all passengers obliged to use said main enstance and greatly to the damage of the dresses of ladies passing in and out thereof, thus subjecting said station to loss and damage for injury to the clothing and wearing apparel of ladies on account of and by reason of the filth so accumulated and caused by said defendants; and thus causing expense and damage to said Union Passenger Station by reason of the fact that it is compelled to almost constantly keep some of its employees engaged in

87 cleaning the floor of and sidewalk in and about said main entrance.

This affiant further states that said defendants have been ordered out of said station on different occasions and told that they had no right inside said entrance but refuse absolutely to depart and go away therefrom.

This affiant further states that the employes of said Union Passenger Station are greatly hampered, inconvenienced, delayed and annoyed by the manner in which these defendants congregate in and about said main entrance; that a great many of them in the performance of their daily duties are compelled to pass in and out of the said main entrance to said station many times each day and that when said main entrance is so blocked by these defendants, they have to force their way through them, thereby causing a great loss of time to said employes and to said Union Passenger Station, and thereby preventing said employes from properly performing their duties to the traveling public, greatly to the damage of said Union Passenger Station, and the complainant.

This affiant further states that he has had several interviews with one Gibbons, who styles himself "president of the Hackman's Union" that said Gibbons upon one occasion wanted to know if this affiant would not allow some solicitors representing the said defendants to enter said station and solicit for passengers, and whether this affiant would not assign to such solicitors some place within said station where they could so solicit, that this affiant told said Gibbons that he would not permit said solicitors and defendants within said station and that he would take measures to have them ejected therefrom, whereupon said Gibbons replied that he would give orders to have all of the hackmen having their hacks stationed upon Canal street, thirty or forty in number, enter said station in a body and solicit for passengers, and this affiant fears that said Gibbons will order said hackmen to so enter said station, and that said hackmen will so enter said station and solicit for passengers for their conveyances, to the damage of said station property and

88 its facilities.

Affiant further states that there is no regular cab or carriage stand within one hundred and ten (110) feet of said main entrance to said Union Passenger Station, but that there has been established a cab stand about two hundred (200) feet north of said entrance and on the east side of Canal street where people requiring conveyances can readily procure them.

Affiant further states that all the ushers employed at said Union Passenger Station wear uniforms, and that the partial uniform worn

by said defendants, is misleading to passengers and others at said station and leads them to believe that these said defendants are regular employes of said station and have a right to appear in said station in pursuance of their business.

THOMAS M. GLENN.

Subscribed and sworn to before me, this 3rd day of March, A. D. 1902.

CLABURN S. JONES,
Notary Public.

[SEAL]

(Endorsed) Filed March 3, 1902, S. W. Burnham, Clerk.

89 AFFIDAVIT OF ARTHUR R. RATSCH.

United States of America,
Northern District of Illinois,
Northern Division.

IN THE CIRCUIT COURT OF THE UNITED STATES,

For the Northern District of Illinois

Northern Division.

Pennsylvania Company,
vs.
Harry Donovan, *et al.*

Arthur R. Ratsch, being first duly sworn, deposes and says that he resides at Number 309 Springfield Avenue in the City of Chicago, Cook County, Illinois; that he is now and has been for the past two years employed as an usher at the Union Passenger Station on Canal street in said City of Chicago.

That his duties in and about said passenger station consist of directing and assisting passengers with their baggage while going to and departing from, through, interstate, local and suburban trains entering into and departing from said station.

This deponent further states that while performing his duties as aforesaid it is necessary for him to go upon the sidewalk in front of said depot to meet passengers arriving at or departing from trains, and to go down the stairs at the main entrance to said station upon Canal street a great many times in each day; that while in the discharge of his duties he meets all, or a great many of the defendants in this case at different times in each day; that he knows most of them by sight and many of them by their names, and nearly all of

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them are cab drivers or expressmen, and stand with their cabs or express wagons on the east side of Canal street between Madison and Adams streets and in front of the Union Passenger Station.

90 This deponent further states that said defendants form into groups of from eight to twenty or more men on the sidewalk in front of the main entrance to the Union Passenger Station, and some of them enter said station at the main entrance to solicit passengers for their hacks and carriages; that when formed into such groups they are loud and boisterous in their language, and they frequently take hold of passengers by their arms and take hold of their baggage in their attempts to solicit their custom for their carriages, and in that way and others they annoy, harass and greatly embarrass said passengers arriving at said Union Passenger Station on through trains, as well as from local and suburban trains; then when formed into such groups they greatly obstruct the sidewalk and entrance in front of said Union Passenger Station and interfere with the free ingress and egress of passengers arriving and departing from said station.

This deponent further states that all of the hackmen who enter said station wear caps, around which there are bands of gold braid and upon which are written the words "Cab Agt", that said hackmen have provided themselves with said uniforms, as this deponent believes, for the purpose of making passengers who enter into and come out of said station believe that they are employed by said Union Pasesnger Station as its servants and agents.

This deponent further states that the said defendants have adopted a system whereby several of them solicit for passengers in the main entrance of the station; that when a passenger is secured, the said solicitor steps out on the said sidewalk in front of the passenger station, waves his hand wildly about his head in an endeavor to attract attention of one of his confederates who is stationed upon the hack stand upon the east side of Canal street and about one block north of the main entrance to said station.

91 This deponent further states that said defendants form themselves into groups at the main entrance to said passenger station and conduct themselves in a loud, boisterous and ungentlemenly manner, tell stories, jostle each other, and in this way greatly interfere with the free ingress and egress of passengers to and from said main entrance; that most of the defendants, if not all of them, chew tobacco, smoke cigarettes and pipes, and expectorate in the said main entrance and upon the sidewalk immediately in front of said main entrance causing filth and dirt to collect, to the annoyance and great damage of ladies and other passengers finding it necessary

to use said main entrance, that said defendants by the manner in which they conduct their business in and about said station interfere with the employes of said station in the performance of their duties to the general public, and thereby cause damage to the said passenger station.

A. R. RATSCH.

Subscribed and sworn to before me, this 1st day of March, A. D. 1902.

JAMES STILLWELL.
Notary Public.

[SEAL]

(Endorsed) Filed March 3, 1902, S. W. Burnham, Clerk.

92 And on to-wit: the third day of March, 1902, in the December term of said Court, 1901, in the record of proceedings thereof in said entitled cause before the Hon. Christian C. Kohlsaat, District Judge, appears the following entry to-wit:

ORDER OF MARCH 3, 1902.

Pennsylvania Company
vs. } 26191
Harry Donovan, *et al.*

Upon motion, It is ordered by the Court that leave be and the same hereby is granted Richard J. Cooney, Esq. to withdraw for one day the affidavits filed by complainant.

93 And on to-wit: the 5th day of March, 1902, being one of the days of the regular December term of said Court, 1901, in the record of proceedings thereof in said entitled cause before the Hon. Christian C. Kohlsaat, District Judge, appears the following entry to-wit:

ORDER OF MARCH 5, 1902.

Pennsylvania Company,
vs. } 26191
Harry Donovan, *et al.*

Upon motion of defendants by their solicitors, It is Ordered by the Court that the defendants' time in which to file their affidavits in opposition to complainant's motion for preliminary injunction be and the same is extended to and including Friday, next. It is fur-

ther Ordered that the motion for preliminary injunction be continued for hearing until Tuesday morning next.

93½ And on to-wit: the eighth day of March, 1902, came the defendants in said entitled cause by their solicitors, Messrs. Altgeld, Darrow & Thompson and Richard J. Cooney and filed in the clerk's office of said Court a certain answer in words and figures following to-wit:

94 IN THE CIRCUIT COURT OF THE UNITED STATES,

In and for the Northern District of Illinois,

Northern Division.

The Pennsylvania Company,
Complainant,
vs.
Harry Donovan, *et al.*,
Defendants.
} In Equity.

The Joint and Several Answers of Harry Donovan, George Callahan, Charles Lewis, M. M. Lee, Joseph Ward, W. H. Ashley, R. L. Taylor, I. Ganthier, I. Vaughn, Sanford McGill, George Baude, J. Baude, A. Reilly, James Casey, Thomas Casey, Edward Devaney, W. Owens, John Kerr, A. Johnson, Tom Quinlan, John Tievens, M. Brady, George Quinlan, George Gustin, John O'Toole, Nicholas Stokes, C. Connell, James Sullivan, Patrick Quinlan, C. Cunningham, J. Vaughn, Peter Taylor, William Simmons, Patrick Regan, James Regan, John J. Casey, M. Crowley, M. Geary, Fred Coop, Charles P. Engle, Eugene Gibbs and John Casey defendants in the above cause to the Bill of Complaint of the Pennsylvania Company, complainant in the above entitled cause.

These defendants now and at all times hereafter, jointly and severally saving and reserving unto themselves all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties and other imperfections in said bill con-
95 tained, for answer thereunto, or to so much and such parts thereof as they are advised it is or are material or necessary for them to make answer unto, answering saith:

That they are separately and individually engaged in the business of cab and carriage driving and of running and operating cabs and carriages and express wagons, the latter for the carrying of baggage for hire in the City of Chicago; that each and everyone of these defendants holds a license from the City of

Chicago, either as a cab or carriage driver, or as an expressman, and has complied with all of the ordinances of the City of Chicago relating to cab and carriage drivers and to expressmen; that the cab and carriage business, as well as the express business in Chicago, is affected with a public use and is semi-public in character, and is, therefore, subject to certain rules and regulations on the part of the City of Chicago.

2. These defendants deny that the matter in dispute between the complainant in this case and these defendants, exceeds, exclusive of interest and costs, the sum or value of Two Thousand Dollars ($2,000.). They deny that it amounts to any sum whatever, and they deny that this case arises under the constitution and laws of the United States.

3. These defendants have no knowledge as to how the Pennsylvania Companyt was incorporated, but they allege that the Pennsylvania Company is a railroad company and was incorporated for railroad purposes, and has no power, right or authority to engage in the business of running hacks, cabs or carriages for carrying passengers to and from hotels and private residences, or
96 to and from depots, nor has it any right or authority to run and operate express wagons in the City of Chicago.

4. These defendants have no knowledge as to how the Pennsylvania Company got possession or control of the Pittsburg, Fort Wayne & Chicago Railway; nor have they any knowledge as to whether the complainant now has a right to operate said railway and the property belonging thereto.

5. These defendants have no knowledge as to who erected or constructed the railway station on the northeast corner of Adams and Canal Streets, in the City of Chicago; nor have they any knowledge upon the question as to what railroads have a right to use said depot.

6. These defendants have no knowledge as to whether said passenger station is the only terminus in Chicago of the railroad lines now using the same.

7. These defendants have no knowledge as to the number of miles of railway that are operated by the different railroads using said depot.

8. These defendants know nothing about the establishment of a postal station in said depot.

9. These defendants do not know how many passengers arrive and depart from said station each day, but believe the number to be very large, and they believe that a large amount of
97 baggage is received and delivered at said station each day; but these defendants allege that in cases where passengers ar-

rive in said depot over the complainant's road, or over any other road, holding through tickets to some other points, so as to make it necessary for them to be taken from said depot of the complainant, on Canal and Adams Streets, to the depot of some other railroad in said City; that such passengers always have been and are now carried not in cabs or carriages, but are carried in omnibuses, known as the Frank Parmelee omnibuses, which are large conveyances holding ten or more people, and that these omnibuses always stand on Canal street, right in front of the main entrance of complainant's depot, and that sometimes there are as many as from six to ten of these omnibuses standing these, and that they aim to meet all trains, and consequently are there most of the day, and that they take up that part of the street adjoining the sidewalk opposite to and near to the main entrance to complainant's depot, so as to make it impossible for either cabs or carriages to get up close to said main entrance. But these defendants allege that said omnibuses drive only to certain hotels and public places and do not, as a rule, go to miscellaneous places or private residences, and that the running of said omnibuses and carrying of through passengers has heretofore had no connection, and has now no connection whatever with that part of the business which usually belongs to cabs and carriages, and that these defendants further allege that even said omnibuses have no more rights upon the streets, no more rights in front of said depot, and no more rights to solicit traffic or trade there than have these defendants, or any other licensed public cab
98 or carriage drivers or expressmen.

10. These defendants admit that there are five other large railway stations in the City of Chicago, which are the termini of great railway systems.

11. These defendants admit that the main entrance, or rather entrances to and exits from the passenger station of complainant are on Canal Street and on the corner of Adams Street, and they admit that many passengers go to and come from said station. They also admit that the baggage is received at said depot on Adams Street, but these defendants allege that they have at no time interfered with, or obstructed any of the entrances to said depot, nor with the free passage of all passengers and other people who wanted to go in or out of said building.

12. They have no knowledge of what it cost complainant to build said depot, but they allege that said depot is affected with a public use and is semi-public property, and that these defendants have at no time interfered with the use of said property in the purpose for which it was erected and maintained.

13. These defendants say that for a number of years the com-

plainant has harassed, persecuted and greatly wronged these defendants, as well as others, with legal proceedings, malicious prosecutions, illegal arrests, and in other ways, not for the purpose, as is alleged in said bill of complaint, of protecting the property of complainant or the passengers who come to or depart from said depot, but for the illegal and wrongful purpose of establishing a monopoly in the cab and carriage and express business at said depot.

These defendants allege that they make their living and support their families by driving and operating cabs and carriages and express wagons; that is, by carrying passengers and baggage to and from the different depots and hotels of said City, as well as to and from private residences of said City; that this is a legitimate and lawful and necessary business for the public convenience; that some of these defendants have been engaged in this business for many years; that all of these defendants, as already alleged, are are regularly licensed by the City of Chicago, and are authorized to conduct said business; that these defendants are law-abiding, industrious and peaceable citizens, who respect the law and do their duty as citizens; that they have not violated the law in any manner, nor have they been guilty of maltreating or injuring or unjustly dealing with any passengers.

These defendants allege that the complainant, through its officers and agents, did enter into an unlawful and criminal conspiracy with one LeRoy Eighme, being the same person mentioned in Clause 13 of the complainant's bill, for the purpose of creating a monopoly in the cab, carriage and express service in and about said depot, and of thus destroying the business of these defendants, rendering them unable to support their families by honest industry, as they had heretofore done.

These defendants allege that the said complainant entered into an agreement with LeRoy Eighme, whereby it was agreed that said Eighme should keep soliciting inside the main entrance of the complainant's depot, soliciting business for cabs and cariages and expressmen, and that all other cab and carriage and express men should be kept out of said station and away from said entrances so as to give said Eighme a monopoly of that business at that place; that prior to the formation of said unlawful conspiracy all licensed cab and carriage men had been accorded equal privileges at said depot, but the after making of said unlawful agreement the complainant, which claims to have control of said depot, refused to permit any of the defendants, or any other licensed cab or carriage men, to stand inside of said depot, or on the outside of said depot, near the entrances, and solicit business, but at the same time it

protected and kept inside of the main entrance of said depot, always one and sometimes a number of agents or employes of said LeRoy Eighme, who in a loud voice solicited business for cabs and carriages, so that it was impossible for any passenger to get out of said depot without being hailed by the agents of said Eighme, and solicited to take a cab or carriage.

These defendants upon information and belief allege the fact to be that the officers and agents of the complainant derived a share of the receipts or earnings of said cab and carriage business so conducted by said Eighme; that these defendants do not know how large a percentage the officers and agents of the complainant were to get from said Eighme of the earnings of said business, but they believe that said percentage to be paid by said Eighme was large, and upon further information and belief these defendants allege the facts to be that in addition to a part of the cash paid by said Eighme to the complainant and its officers and agents, in consideration of being given a monopoly of said cab and carriage business, that the offices and agents for the complainant, individually were given free cab and carriage service by said Eighme, in consideration
101 of said monopoly.

These defendants allege on information and belief that the complainant has now the same arrangement with the Parmalee Transfer Company that it formerly had with said Eighme, and is deriving the same benefits, and that the officers and agents of the complainant are deriving the same benefits and perquisites from the maintenance of said monopoly that they formerly did. These defendants, therefore, allege that the complainant, which has no legal right to conduct a cab or carriage business at all, but even if it had a right to conduct a cab or carriage business, could only exercise and enjoy such right in common law with all other licensed cab and carriage drivers, has entered into an unlawful conspiracy, not only to get a profit out of a business which it has no legal right to conduct at all, but has endeavored to establish, and is now endeavoring to maintain a monopoly which these defendants are advised is a crime under the laws of the State of Illinois.

These defendants further allege that all of the trouble in this case has arisen, not by reason of anything that has been done by any of these defendants, or by any misconduct of theirs, but has arisen out and is entirely due to the attempt of the complainant to establish a monopoly of the cab and carriage business in and about said depot, to derive a profit out of a business it has no legal right to enter into, and to have its officers and agents get perquisites and advantages and service free that they otherwise would not be entitled to, and that the complainant is now in connection with said Parmelee

Transfer Company, trying to destroy the business of these defendants, as well as of other licensed cab and carriage drivers in this City, so as to make it impossible for these defendants to continue to support their families by honest industry and the prosecution of a legitimate business, as they have done in the past.

These defendants further deny that they or any of them, have practiced extortion, or have done anything that tended to annoy or injure the passengers going to and coming from said depot, or that they, or either of them, have done anything to injure said complainant or its business. They deny that they have created or committed any nuisance about said depot. They deny that helpless women and children, or old people, have been unjustly treated or subjected to extortionate charges, or taken to wrong destinations, as alleged in said bill of complaint, but these defendants allege that said allegations are made in said bill simply as a subterfuge and an excuse by which the complainant hopes to be able to establish the monopoly aforesaid.

14. These defendants admit that the City Council of the City of Chicago, did pass an ordinance setting apart a small portion of the street on the east side of Canal Street, just south of Madison Street, for a hack-stand; that this hack-stand was made for the purpose of accommodating the public, so that passengers, arriving at the complainant's railroad station, should be able to get cab and carriage service when needed; that said hack-stand is limited in size; is, in fact, entirely too small and takes up only a very small portion, viz: one hundred and ten feet of the street next to the sidewalk, on the east side; that said hack-stand is not opposite any of the public entrances to the complainant's depot; that it does not interfere in any way or manner with the conduct of complainant's business, nor with the approach to complainant's depot and railroad. These defendants deny that said hack-stand is a detriment to complainant's property, or that it tends to create a nuisance. On the contrary, these defendants allege the facts to be that said hack-stand is kept in a clean, orderly condition, and they deny that the complainant has been subjected to any annoyance, or loss, or damage, or that the passengers arriving at said station, over any of the railroads, have been subjected to loss of time, or unnecessary annoyance at the hands of any person connected with or using said hackstand.

These defendants further allege that the complainant is engaged in a business that is affected with a public interest, and that it was proper to locate a hack-stand at that place, and these defendants do further allege that the title to the street on which said hack-

stand is located, is not in the defndant at all, but is in the City of Chicago; that, therefore, the City had a right to locate said hack-stand, and any and all other hack-stands, as in its judgment would best serve the public interest.

15. These defendants admit that in January, 1896, the City Council of Chicago, passed an ordinance regulating the manner in which cab and carriage men should approach the complainant's depot and carry on their business; but these defendants deny that said ordinance was passed at the solicitation or through the influence of these defendants. They further allege that said ordinance was passed simply for the purpose of having the cab and carriage business at said depot conducted in an orderly manner and without confusion; that the provision of said ordinance
104 which authorize the first hackman or carriage man, and the first cab man in line at said hack-stand, to move up nearer the main entrance of the station, at the time of the arrival of trains, in order to better accommodate passengers, was and is a reasonable and proper provision; that the hack-stand above described, is four hundred feet away from the entrance to said depot, and that unless one or more vehicles could move up nearer the entrance, when trains arrive, passengers desiring cab or carriage serivce, would have to go out on the sidewalk and walk several hundred feet before they would get to a place where they could hire a cab or carriage; that the provision of said ordinance, authorizing one carriage driver and one cab driver to stand nearer the main entrance, was intended for the convenience of the public, and also intended to prevent anything lik ea scramble and to prevent confusion. But these defendants allege that said ordinance tended to interfere with the monopoly in the cab and carriage business which the complainant was endeavoring to establish at said depot, and to interfere with the profits which the complainant was making out of said monopoly, and to interfere with the perquisites and personal private advantages which the officers and agents of the complainant were getting out of said monopoly, and, therefore, and for no other reason the complainant sought to evade said ordinance, and to have the same declared null and void.

Former Suit.

These defendants allege that in February, 1896, the complainant herein, the Pennsylvania Company and the Pittsburg, Fort Wayne & Chicago Railway Comyany filed their bill of complaint in
105 the Circuit Court, of Cook County, State of Illinois, on the chancery side thereof, against the City of Chicago and the

then Chief of Police, in which, among other things, they sought to have said ordinance above referred to, declared null and void and that in said bill of complainant they set out most of the matters which is set out in the bill of complaint in this case; that a copy of said bill of complaint filed in said cause in the Circuit Court of Cook County, is hereto attached, and marked "Defendants' Exhibit A" and made a part of this their answer; that by an inspection of said copy of said bill, the court will see that substantially all of the important questions which are set out or involved in this cause now pending in this United States Court, were involved in said cause in the Circuit Court of Cook County.

These defendants further allege that after the filing of said bill in said Circuit Court of Cook County, Walter Owen, defendant in the present suit, became and was made defendant in that suit, and filed an answer therein, a copy of which is hereto attached and made a part of this answer, and marked "Defendants' Exhibit B."

These defendants further allege that issue was joined in said cause of said Circuit Court of Cook County, and that a trial was had; that a judgment was entered in said court; that an appeal was prosecuted to the Supreme Court of the State of Illinois, and that said cause was decided in said Supreme Court adversely to the complainants therein, and adversely to the Pennsylvania Company, the complainant is this suit; that all of the questions which the complainant here asks this Honorable Circuit Court of the United States to pass on, were decided by the Supreme Court of the Supreme Court of the State of Illinois still stands unreversed, Supreme Court of the State of Illinois still stands unreversed, and is in full force, and is binding upon the complainant in this case; that in said decision the Supreme Court of this State, among other things, state:

"A railroad Company can make all needful reasonable "rules and regulations, concerning the use of its depots and "grounds, and can exclude all persons therefrom who have "no business with the railroad or passengers going to and "coming from the trains or depots, and it probably can pro- "hibit all persons from soliciting passengers there themselves, "upon its premises, but it cannot especially admit one com- "mon carrier of passengers or freight to its depot or grounds "and exclude all others, for no other reason than that it is for "its own private profit or share It may determine the dis- "tance from its depot or track at which persons soliciting "passengers may stand while on its grounds, but this deter- "mination must affect and apply to all. To permit a railroad

"company upon any charge, except of wrong or misconduct "on the part of the person excluded, to allow one hackman "or line of hacks, to occupy a place upon its grounds, which "is denied to another; or to set apart the most favorable "ground, as in this case, to one company and to exclude the "others therefrom, would be in the language of Justice Field, "in Railroad Company vs. Tripp, 147 Mass., page 43, to enable "a railroad corporation largely to control the transportation "of passengers and merchandise beyond its own line and to "establish a monopoly not granted by its charter, which "might be solely for its own benefit and not for the benefit of "the public."

These defendants here attached a copy of the decision of the Supreme Court in this cause, to this their answer, and mark it "Defendants' Exhibit C", and make it a part of this their answer.

These defendants further answering allege that they have at all times been ready to observe and comply with all reasonable rules and regulations which the complainant might make, touching the cab and carriage service and express service, in and about its depot;

but they have insisted, and do insist that such rules and regu-
107 lations must affect all cab and carriages men and expressmen alike; that all must be given the same privileges in and about said depot, because the business there conducted is of a semi-public nature, and is affected with a public interest; but that the complainant has absolutely refused to respect or abide by the decision of the Supreme Court of the State of Illinois; that the complainant has, in fact, spit upon the law as laid down by the Supreme Court of the State of Illinois, and that notwithstanding said decision the complainant insists on establishing and maintaining a monopoly in the cab and carriage business in and about its depot; that it permitted two and sometimes more of the agents of the said Eighme, and now of the Parmelee Transfer Company, to stand constantly inside of said depot, in the main entrance thereof, where all passengers arriving on trains have to pass, and to in a loud voice, hail every passenger and solicit business for cabs and carriages and express service, and that while so permitting, and in fact keeping said agents of said Eighme and now the Parmelee Transfer Company in said depot, the complainant refuses to permit any of the defendants, or other licensed cab or carriage men or expressmen of the City of Chicago, to come inside the said depot, or to solicit any business there, and refuses to even permit them to stand on the sidewalk in front of said depot and solicit business there.

These defendants allege that they have respected the ordinance of the City of Chicago, which provides that only two men, one cab man

and one carriage man, might stand at the entrance at said depot at a time, in order to avoid a crowd and avoid confusion, and that they have at all times conducted themselves in an orderly and peaceable manner, and that if the complainant were willing
108 to grant to these defendants and to other licensed cab and carriage men the same privileges that it seeks to give to the Parmelee Transfer Company, as by the decision of the Supreme Court of this State it is required to do, that then there would be no annoyance of any kind to anybody.

These defendants further allege that they have all along been ready, and are now ready, as an organization and individually, to give the said complainant all reasonable and proper assurances to respect and observe all reasonable and proper rules, in and about said depot, and all they ask is that all licensed hack, cab and carriage drivers and expressmen be given equal privileges in and about said said depot. These defendants allege that they have heretofore offered, and they now again offer to assist the complainant's agents in and about said depot, to maintain order and quiet, and decent and proper conduct of the cab and carriage business in and about said depot; that they do not object to severe and rigorous rules; that both individually and as an organization they will assist in enforcing all such rules; but they do insist that such rules must apply to all alike.

These defendants further answering allege that the complainant has continued to harass and persecute all of these defendants who come to or near said depot for the purpose of doing business, and has, through its agents, had a number of these defendants illegally arrested and subjected to insult and outrage, and for the purpose of establishing a monopoly in the cab, carriage and express business in and about said depot, and thus making it impossible for these defendants to support their families by honest effort in the conduct of their business, as they had formerly done. They emphatically
109 deny that they or either of them have done anything, at any time, to obstruct the business of the complainant, or to interfere with the free ingress or egress of passengers to and from said depot. They deny that the complainant has any grievance whatever, or has sustained any damage whatever, or that it has any standing in a court of equity, but they allege that the complainant has all along been the wrong doer, and has been the aggressor, and has subjected these defendants to insult, humiliation, great loss and damage, simply because it felt that it was a powerful corporation, and could afford to ignore the laws whenever it saw fit, and could crush individuals.

These defendants admit that there is an organization or associa-

tion of hack and carriage drivers, to which most of these defendants belong, and they allege that said organization was formed and is maintained for mutual benefit and assistance among its members, just as similar organizations are maintained by the people connected with other lines of business in this community. They deny that said association, or any of the members thereof, have entered into any conspiracy or combination to wrong or injure the complainant, or its property, or to interfere in any way with the business of the complainant.

16. These defendants say that it is true, as they have already stated, that the complainant sought to have a number of these defendants arrested and dragged to the police courts, and otherwise hounded, prosecuted and deprived of their rights, and they allege that this was not because of any wrong that had been done by any of these defendants, nor for any violation of the laws or of any of the ordinances of the City of Chicago, but that it was simply a species of prosecution intended to destroy the business of these de-
110 fendants, so as to enable the complainant and its agents to maintain their monopoly, as heretofore explained.

17. These defendants deny that they are irresponsible. They deny that the complainant has suffered or is suffering any damage or injury from their conduct. They deny that the complainant is being deprived of the use of its property without due process of law. They deny that the complainant has any grievance or any right to maintain this suit.

Other Railroad Depots.

For the purpose of showing the unreasonable and unjust position which has been taken and is being maintained by the complainant in this case, is refusing to respect and obey the decision of the Supreme Court of this State, by putting all cab, carriage and express men on the same basis, and granting to all the same privileges in and about its depot, these defendants call the attention of the court to the fact that the corporation and officers having charge of the Grand Central Depot, in the City of Chicago, have pursued, and are now pursuing just the opposite course from that which is being pursued by the complainant, and that there is no trouble of any kind or character in and about that depot, in connection with the carriage, cab and express service. These defendants allege that the business done at the Grand Central depot in this City, is almost as large as that done at the complainant's depot; that for several months last past, the following named great railroads have used the Grand Central Depot for their Chicago terminal, and are now,

using it, viz:—the Baltimore & Ohio Railroad, the Northern
111 Pacific, the Chicago & Great Western Railroad, th[illegible]ke Shore & Michigan Southern Railroad, the Chicago, Rock Island & Pacific Railroad and the Nickel Plate Railroad; that there is near said Grand Central Depot a public hack-stand on the street, just as there is near the complainant's depot; that in addition thereto there is at the Grand Central Station a covered carriage court, where cabs and carriages wait for passengers; that this court is limited in size and cannot accommodate very many cabs or carriages at one time; that consequently the cab and carriage business is a little more difficult to handle at the Grand Central depot than it is at the complainant's Union Depot, on Canal and Adams Streets; but these defendants allege that for about two months last past, and while all of the above named railroads were using said Grand Central Railroad for terminal purposes, all licensed cab and carriage drivers have been created equal privileges and rights in and about said Grand Central Depot; that rules and regulations to govern the same were adopted by the officers in charge of said depot, and that all cab and carriage drivers observe and respect same.

These defendants further allege that inquiry of the officers in charge of said Grand Central Depot, has developed the fact that there has been no annoyance, or embarrassment or difficulty of any kind, with cab or carriage drivers, and that the cab and carriage business, in and about said Grand Central Depot, since the time that all were granted equal privileges has been satisfactory; that the officers of said depot declare a more satisfactory condition of affairs there now than they ever had before; and these defendants allege
that a similar condition can be made to exist at the Complain-
112 ant's Union Depot immediately, if the complainant were only willing to respect the law and to do justice and accord equal privileges to all, and give up its illegal effort to maintain a monopoly; that for the information of the court these defendants attach hereto and make a part of their answer, some suggestions which Mr. Jesse B. Barton, the attorney for the corporation controlling the Grand Central Depot, prepared for the governance of cab and carriage drivers in and about said depots, and which suggestions are being strictly followed and are producing very satisfactory results.

These defendants further answering allege that instead of assisting the complainant to maintain an unlawful monopoly and destroy the business of these defendants, and make it harder for them to honestly support their families, that the great powers of this court should be used rather for the protection of the weak as against the unjust acts of the strong, and that, therefore, the complainant herein should be required to respect the law of the land, and to adopt rea-

sonable rules and regulations governing the cab and carriage business in and about its depot, and extending the same privileges to all licensed cab and carriage drivers, who come prepared with proper equipment to serve the public, and these defendants both individually and as members of their organization, will assist the complainant in enforcing all such reasonable rules and regulations, so that there will be no just cause for complaint from any source.

113 And these defendants deny all and all manner of unlawful combination and confederacy, wherewith they are by the said bill charged, without this that there is any other matter, cause or thing in the complainant's said bill of complaint contained, material or necessary for these defendants to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed and avoided or denied, is true to the knowledge or belief of these defendants; all which matters and things these defendants are ready and willing to aver, maintain and prove, as this honorable court shall direct; and pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

HARRY O. DONOVAN,
R. L. TAYLOR,
I. GANTHIER,
GEORGE H. BAUDE,
A. RILEY,
JAMES CASEY,
THOS. E. CASEY,
EDWARD DEVANNY,
WALTER OWEN,
THOS. QUINLAN,
JOHN TEEVIN,
M. BRADY,
GEORGE GUSTIN,
JOHN TOOLE,
JOHN VAUGHN,
P. TAYLOR,
WM. SIMMONS,
JAS. REGAN,
FRED COOP,

114 CHAS. P. ENGEL, and
GEORGE CALLAHAN,
CHARLES LEWIS,
M. M. LEE,
JOSEPH WARD,
W. H. ASHLEY,
I. VAUGHN,

SANFORD MCGILL,
J. BAUDE,
JOHN KERR,
A. JOHNSON,
GEORGE GUSTIN,
NICHOLAS STOKES,
C. CONNELL,
JAMES SULLIVAN,
PATRICK QUINLAN,
P. CUNNINGHAM,
PATRICK REGAN,
JOHN J. CASEY,
M. CROWLEY,
M. GEARY,
EUGENE GIBBS, and
JOHN CASEY,
By RICHARD J. COONEY, and
ALTGELD, DARROW & THOMPSON,
Solicitors for Defts.

RICHARD J. COONEY,
Solicitor for Defts.
ALTGELD, DARROW & THOMPSON,
Of Counsel.

115 IN THE CIRCUIT COURT OF THE UNITED STATES,

In and for the Northern District of Illinois.

Northern Division.

The Pennsylvania Company,
Complainant,
vs.
Harry Donovan, *et al,*
Defendants.
} In Equity.

United States of America,
State of Illinois,
County of Cook.
} ss.

On this Eighth day of March, A. D. 1902, before me, personally appeared Harry Donovan, R. L. Taylor, I. Ganthier, George Baude, A. Reilly, James Casey, Thomas Casey, Edward Devaney, Walter W. Owens, Tom Quinlan, John Tievens, M. Brady, George Quinlan, John Towle, J. Vaughn, Peter Taylor, William Simmons, Joe Regan, Fred Coop, Charles P. Engle, and each for himself

made oath that he had heard read the above answer by him above subscribed, and know the contents thereof, and that the same is true of his own knowledge, except as to matters which are therein stated to be on information and belief, and as to those he believes them to be true.

.....

Subscribed and sworn to before me this 8th day of March, A. D. 1902.

JACOB C. LEBOSKY,
[SEAL] *Notary Public.*

116 DEFENDANT'S EXHIBIT "A."

State of Illinois, } ss.
County of Cook. }

IN THE CIRCUIT COURT OF COOK COUNTY.

To the Honorable, the Judges of said Court, In Chancery Sitting.

Your orators, the Pennsylvania Company and the Pittsburgh, Fort Wayne & Chicago Railway Company, humbly complaining, showeth unto your Honors

That said Pittsburgh, Fort Wayne & Chicago Railway Company is a corporation of the State of Illinois, with power to construct, maintain and operate railroads.

That in pursuance of the power in it vested by the laws of the State of Illinois, it is the owner of a line of railway running from Pittsburgh, in the State of Pennsylvania, westward through said last mentioned State and the States of Ohio and Indiana, to and into the City of Chicago, in the State of Illinois.

That your orator, Pennsylvania Company, under the powers conferred by the charter, and the laws of the State of Illinois, is now exercising the control, management and operation of said line of railway, under the terms of a lease thereof for 999 years from the first day of July, 1869.

That said line of railway constitutes an important part of through lines of transportation from the east to the west, of freight and passengers and the United States mail.

That your orators in the year 1880 did erect, upon premises owned, held, operated and managed as aforesaid, a large and expensive passenger station, and the necessary facilities incident to its operation for the proper accommodation of the business thereof, occupies a tract of land bounded as follows, to-wit: on the south by

the north line of Van Buren Street, on the west by the east line of Canal Street, on the north by the south line of Madison Street, and on the east by the Chicago River.

That said station, since its construction, has been occupied and used and is now being occupied and used by your orator, the
117 Pennsylvania Company (operating the Pittsburgh, Fort Wayne & Chicago Railway Company); The Chicago & Alton Railroad Company; The Chicago, Burlington & Quincy Railroad Company; The Chicago, Milwaukee & St. Paul Railway Company; and the Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company.

That said occupation is under the terms of agreements for perpetual use by said Companies, made between them and your orators, by which it is provided that your orator the Pennsylvania Company, shall have charge of the management and maintenance of said station and property.

Your orators further represent that the said passenger station is the only terminus in the City of Chicago, of each of said lines of railway, and through which, alone, they can conduct the exchange of passengers and baggage and the United States mail destined to points east, west, south and north, and that for this purpose and for local business, there arrive and depart from said station Two Hundred and thirty-three trains in each twenty-four hours.

That the average number of passengers arriving and departing from said station daily is over Thirty-one Thousand;

That there are received and delivered at said station daily over twenty-nine hundred pieces of baggage, or over one million pieces per year;

That the average receipt and delivery of the United States mail at said station is one hundred and seventy-eight tons each day; That the daily average number of corpses received or delivered from said station is six;

That the said business, in each particular above referred to, is constantly increasing;

Your orator further represents that all tickets which entitle the owners thereof to proceed to points beyond the terminus of said lines of railway at Chicago, and known as "through tickets," have attached thereto a check or coupon for conveyance through
the City of Chicago to the station of the connecting line of
118 railway designated on said "through tickets"; that each of the corporations above named have contracts for the use of a line of omnibuses or stages for the performance of the service called for by said coupons or checks, and that said omnibuses or stages, so employed by contract, form the only regular connecting line of

transportation between the various passenger stations in Chicago.

That the entrance to said station for all purposes of business between the public and the said corporations are on Canal Street, as shown by a sketch hereto annexed, marked Exhibit "A," which said sketch your orators pray may be taken and considered as a part of this complaint.

That said entrances are thirty in number and are in constant and necessary use for the transaction of business between your orator, the Pennsylvania Company, acting for itself, and said corporations and the public.

That the entire length of the said buildings, so occupied as a station, is about 1070 feet from north to south, fronting on Canal Street; That for the proper accommodation of said business, the baggage rooms are located at the north and south ends of the building, between which points are entrances to the railroad tracks, waiting rooms, the dining and lunch rooms, ticket office and other rooms devoted to the business of said station;

Your orators further represent that the space immediatly in front of said station building and grounds is necessary for the transaction of said business of said station, and that the space is occupied substantially as follows: That portion of said passenger station near and south of Madison Street is occupied by an entrance to the tracks and power house, (which power house is used for heating and lighting said station) and also as a station for carriages and cabs while waiting for passengers, and also as a passage way for receiving and delivering United States mail for certain of the railroads entering said station grounds:

119 That the space in front of said station buildings from Adams street north is used for various exits and entrances to said station grounds, including two stair ways to and from the tracks, entrance to and from the ladies' room, the main entrance to said passenger station, space for receiving and delivering western baggage with five openings, and an opening for the Union News Company, for receipt and delivery of newspapers and books for trains, all the space between the North line of Adams street, and a distance of about 500 feet north therefrom, is in constant use by public and private carriages, cabs, omnibuses, stages and other vehicles, for the accommodation of passengers arriving at and departing from the said City upon the trains of said Companies;

That between said Van Buren and Madison Streets on the East side of Canal street are located all the said various entrances to and exits from said passenger station for passengers, baggage to and from Eastern and western points, United States mail to and from same

points, all newspapers and books for trains, and entrance direct to power house and tracks for teams and various purposes.

Your orators further show that on the 31st day of December, A. D. 1885, there was passed by the Common Council of the City of Chicago, and approved by the Mayor, an alleged ordinance, which is published as Section 1704 in the laws and ordinances of the City of Chicago published in 1890, and is in the words and figures following, to-wit:

"1704. Stands established. 1170. Any duly licensed hackney coach, cab or other vehicle for the conveyance of passengers, may stand, while waiting for employment, at any of the following places, and for the period of time hereinafter provided:

Stand No. 1. The north side of Washington street, between Clark and La Salle Streets.

Stand No. 2. That portion of the west side of Clark street, beginning fifty feet from the south-west corner of Randolph and Clark streets, and running thence to Washington streets.

Stand No. 3. The east side of LaSalle Street, between Washington and Randolph streets.

Stand No. 4. The east side of Canal street, occupying 110 feet between Adams and Madison streets, as the superintendent of police shall direct.

Stand No. 5. At all theaters and other places of public amusement, fifteen minutes before the conclusion of the performance.

Stand No. 6. At all railroad depots, ten minutes previous to the arrival of all passenger trains.

Stand No. 7. On such street [illegible]ers from ten P. M. until sunrise, as the superintendent of police shall designate.

Stand No. 8. At such other places, where the occupants of the premises in front of which it is desired to stand for employment shall give permission, in writing, to the owner or driver so to do; and it shall be approved, in writing by the superintendent of police. Provided it shall not be lawful to stand for employment in front of a hotel where such stand has been established on the opposite side of the street from such hotel. (As amended, by Ord. passed Dec. 31st, 1885."

Your orators further show that stand Number 4, described in said alleged ordinance, is located in front of the property owned by your orators as and for their passenger station and grounds, as hereinbefore particularly stated.

Your orators further show that ever since the passage of said alleged ordinance, and against the repeated protests of your orators, licensed hacks, cabs and express-wagons accompanied by their

respective drivers, have, under the authority of said alleged ordinance, and of the Superintendent of Police of said City of Chicago, been permitted to stand on the east side of Canal street for a distance of about three hundred (300) feet from the south line of Madison street, occupying the street for said space, to the exclusion of all public traffic, and to the entire exclusion of your orators' use thereof, and creating a nuisance to your orators, by reason of the continuous standing of horses at said point, and the failures of said City to keep said space clean and wholesome and free from the nuisance created by said horses;

That the said drivers of said hacks, cabs and express wagons occupy a portion of the sidewalk on the east side of Canal street in soliciting passengers and baggage for their vehicles, and in so doing have destroyed for public use that part of Canal street so exclusively occupied by said vehicles and drivers and have injured and impaired the property rights of your orators and prevented the free use of your orators' said property.

121 Your orators further show that stands number 1, 2 and 3, designated under said alleged ordinance, are adjacent to or abutting upon public property and not private property, and that the only specific hack stand provided under said alleged ordinance in front of private property is said stand Number 4 in front of the property of your orators.

Your orators further charge that the said alleged ordinance, so far as it creates a public stand on the east side of Canal street, between Adams and Madison streets, is illegal and void, because no such power is under its charter conferred upon the Common Council of the City of Chicago; for that it subjects your orators' property to an unjust burden different from that cast upon any other private property in the City of Chicago, without compensation; in that it gives to private uses a portion of Canal Street, which is held in trust by the City of Chicago solely for the public use as a street; and for that it prevents the free use and free ingress and egress to and from the property of your orators and the free use of the street in front of said property of your orators and the free use of the street in front of said property.

Your orators further show that on the 20th day of January, A. D. 1896, there was passed by the Common Council of the City of Chicago an alleged ordinance, which went into effect on the 28th day of January, A. D. 1896, and which ordinance is in the words and figures following, to-wit:

"An Ordinance regulating the drivers of vehicles at railroad depots.

Be it ordained by the City Council of the City of Chicago:

Section 1. That when at or near any railroad passenger de-

pot in the City of Chicago, a place has been or shall be designated as a licensed carriage stand, it shall be lawful for the drivers of the first double and first single vehicle in line, to stand in front of such railroad passenger depot and solicit business; provided, such drivers shall not in so soliciting business obstruct the sidewalks nor stand thereon at a greater distance than two feet from the curb line.

Section 2. This ordinance shall take effect and be in force from and after its passage."

122 And your orators show that since the passage of said alleged ordinance, and against the protest of your orators, drivers of the first double and first single vehicle in line at said hack stand number 4 claim the right to stand, and, under the authority of the superintendent of police of the City of Chicago, and against the protest of your orators, are permitted to and do stand continuously during each day from seven A. M. to ten P. M. upon the sidewalk directly in front of the main entrance to your orators' passenger station, for the purpose of soliciting business for their hacks and cabs, to the injury of your orators' property rights in the premises and to the injury of the other railroad corporations using said passenger station, and to the annoyance of the passengers daily using the main entrance to your orators' said station.

Your orators further charge that said last mentioned alleged ordinance is wholly illegal and void, not in the power of the Common Council of the City of Chicago to pass, and is an unjust and undue burden thrown upon the private property of your orators, is an infringement of their lawful rights in the premises, subjects a portion of a public street to a private use in derogation of public rights, and is wholly unwarranted in law or under any of the powers granted to the said City of Chicago under its charter.

Your orators further show that the passengers, parties or corporations using the space immediately in front of said station building for its entire length, whether the said use is performed in connection with private carriages, express wagons, hacks, omnibuses, hearses, or other vehicles, do not occupy any of said space for a longer period than that sufficient to receive and discharge passengers, baggage and United States mail for each arriving and departing train; while under said two alleged ordinances, the space occupied by said licensed hacks, cabs and vehicles, and the space upon said sidewalk for a hack and cab driver respectively in front of the main entrance to said station, is placed at the exclusive disposal of the hack and

123 cab drivers and expressmen to the exclusion of your orators, the other railways occupying said station, their passengers, and

the public generally, all which space is necessary and important for the proper transaction of the immense business to which said station and premises between said Van Buren and Madison Streets are devoted, and does injuriously interfere with the private right of your orators in said property.

Your orators further represent that the interference, interruption, delay, damage and annoyance herein complained of cannot be measured or remedied by any money, compensation, for the reason that the injury charged is incapable of specific description and is irreparable.

Your orators further show that the superintendent of police of the City of Chicago, is John J. Badenoch and that against the protests of your orators, he has allowed the use of your orators' said property as a hack stand, and has allowed the cab and hack drivers first in line respectively to stand upon the sidewalk directly in front of the main entrance to your orators' passenger station, under the authority of said two alleged ordinances.

To the end, therefore, that your orators may have that relief, which they can only obtain in a court of equity, and that the City of Chicago and John J. Badenoch, superintendent of police, who are made defandants hereto, may be required to answer your orators bill of complaint, but not under oath, answer under oath being hereby expressly waived, and that said alleged ordinance of December 31st, 1885, and said alleged ordinance of January 20th, 1896, may be declared illegal, null and void, and that a perpetual injunction may be decreed by this Honorable Court, directed to the City of Chicago and John J. Badenoch, superintendent of Police, his successor or successors in office, perpetually restraining them and each of them from establishing any hack or express wagon stand in front of
124 the property of your orators, between Van Buren and Madison streets, and perpetually restraining them and each of them from permitting any drivers of the first double or first single vehicle in line at any hack stand to occupy the sidewalk in front of the passenger station of your orators; and that your orators may have such further or other relief in the premises as shall seem agreeable to equity and meet in the premises.

And your orators pray that summons may be directed to the said City of Chicago and John J. Badenoch, superintendent of police, defendants, commanding them, at a certain time and under certain penalty, to be and appear before this Honorable Court, and then and there full, true, direct and perfect answer make to all and singular the premises, and further to stand to, perform and abide such further order, direction and decree therein as to your Honors shall seem meet.

And may it please your Honors to grant unto your orators a temporary writ of injunction, restraining the City of Chicago and John J. Badenoch, superintendent of Police, from designating or maintaining any hack or express wagon stand upon the east side of Canal street, between Van Buren and Madison Streets, and restraining said City of Chicago and said John J. Badenoch, and his successor or successors in office, from allowing or permittting any drivers of any double or single vehicle to stand in front of the main entrance of the passenger station on said Canal street.

PENNSYLVANIA COMPANY.
PITTSBURGH, FORT WAYNE & CHICAGO RAILWAY COMPANY.
By FRANK J. LOESCH,
Solicitor for Complts.

FRANK J. LOESCH,
of Counsel.
LOESCH BROTHERS & HOWELL,
Solicitors for Complainants.

125 State of Illinois } ss.
County of Cook. }

Thomas M. Glenn, being first duly sworn, says that he is employed by said complainants as the Station Master, in charge of the passenger station and premises described and mentioned in the foregoing bill of complaint; that he has read the foregoing bill of complaint and knows the contents thereof, and that the same is true.

(signed) THOMAS M. GLENN.

Subscribed and sworn to before me this 24th day of February, A. D. 1896.

J. R. HOAGLAND,
[SEAL] *Notary Public.*

126 State of Illinois } ss.
County of Cook. }

IN THE CIRCUIT COURT OF COOK COUNTY.

Pennsylvania Company and the Pittsburgh, Fort Wayne and Chicago Railway.
vs.
City of Chicago, *et al.*
} Intervening answer of Walter Owen.

The answer of the intervening defendant, Walter Owen, to the bill of complaint of said complainants.

This defendant now and at all times hereafter saving and reserving unto himself all benefit and advantage of exceptions which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said bill contained, for answer thereunto or to so much of said parts thereof as this defendant is advised, it is or are material or necessary for him to make answer unto, answering says that he is a licensed hack driver, said license being number 162 of hack 162 and that he has been engaged in such occupation as said hack driver and owner for more than twelve (12) years last past, a greater part of which time he has stood at the hack stand designated as hack stand number 4 in front of the baggage room of the Union Depot, and answering says that he admits that the Pittsburgh, Fort Wayne and Chicago Railway Company is a corporation of the State of Illinois, with power to construct, maintain and operate railways, that it is the owner of a line of railway running from Pittsburgh in the State of Pennsylvania westward through the State of Illinois and the States of Ohio and Indiana and into the City of Chicago.

And further that the said Pennsylvania Company under the powers conferred upon by it its charter and the laws of the State of Illinois, is now exercising the control, management and operation
127 of said line of railway, under the terms of a lease thereof for 999 years from the date 1st day of July, 1869.

This defendant further answering says that he neither admits or denies that the said line of railway constitute an important part of through line of transportation from the east to the west of freight and passengers and of the United States mail.

And further this defendant admits that in the year 1880 there was erected upon certain premises upon a tract of land bounded as follows, to-wit, on the south by the north line of Van Buren street, on the west by the east line of Canal street, on the north by the

south line of Madison street and on the east by the Chicago river, a passenger station and the necessary facilities incident to its operation for the proper accommodation of the business therein transacted but as to whether or not the said complainant erected said station, this defendant neither admits or denies.

This defendant admits that the said station since its construction has been and is used and is being used and occpuied by said complainants, the Pennsylvania Railway Company (operating the Pittsburgh, Fort Wayne & Chicago Railway Company); the Chicago & Alton Railroad Company; Chicago, Burlington & Quincy Railroad Company; Chicago, Milwaukee & St. Paul Railway Company; and the Pittsburgh, Cincinnati, Chicago & St. Louis Company.

This defendant neither admits or denies that the occupation of said depot and station is under the terms of an agreement for perpetual use by the said last Companies, made between them and the complainants herein, or that it provides that the said complainants shall have charge of and the management and maintenance of said station, but of this the defendant calls for a strict proof of the same.

This defendant further admits that the said passenger station is the only principle terminus in the City of Chicago, of each of the said line of railway and through which, alone, they can conveniently conduct the exchange of passengers and baggage and the
128 United States mail destined to points east, west, south and north and that for this purpose and for the local business there arrive and depart from said station Two Hundred and thirty-three trains in each twenty-four hours.

This defendant further answering neither admits or denies that the average number of passengers arriving and departing from said station daily are over Thirty One Thousand, or that said complainants receive and deliver at said station daily over Twenty nine Hundred pieces of baggage or over One Million pieces a year, but this defendant calls for a strict proof of the said allegation.

This defendant neither admits or denies that the average receipt and delivery of the United States mail at said station is One Hundred and seventy-eight tons each day or that the average number of corpses received from said station is six, but calls for a strict proof of the same.

This defendant neither admits or denies that all tickets which entitle the owners thereof to points beyond the terminus of said lines of railway at Chicago, and known as "through tickets" have attached thereto a check or coupon for conveyance through the City of Chicago to the station of the connecting lines of railway designated on said "through tickets" and each of the corporations above named, have contracts for use of a line of omnibuses or

stages for the performance of the service called for by said coupon or checks, and that said omnibuses or stages so employed by contract, form the only connecting line of transportation between the various passenger stations in Chicago, but this defendant calls for a strict proof of the same.

This defendant admits that the entrances to said depot for all material purposes of business between the public and the said corporations are on Canal street but this defendant neither admits or denies as to the correctness of the allegations in said bill
129 made by the plans and sketch thereto attached, but calls for a strict proof of the same.

This defendant denies that there are thirty (30) entrances in number that are in use or constantly necessary for the transaction of the business between the said station and the railroads entering to and from the same.

This defendant further admits that the length of said building so occupied as a station is about 1700 feet from the north to the south, fronting on Canal street and that the baggage rooms are located on the north and south ends of said building, between which points are entrances to the railroad tracks, waiting rooms, dining and lunch rooms, the ticket office and other rooms devoted to the business of said station.

This defendant denies that the space immediately in front of said station building and ground is necessary for the transacton of the business of said station, but admits that a portion of said passenger station near the south line of Madison street is occupied by entrances to the tracks and power house.

And this defendant avers that the said entrance is about twenty feet in width.

And this defendant also admits that on the station grounds in and on said entrances to the power house of said depot there is a station for carriages and cabs while waiting for passengers and that the said entrance may be used for receiving and delivering United States mail for certain of the railroads entering in said station grounds.

This defendant alleges and avers that no general cab, carriage, coach or other vehicle is allowed in and on said grounds at said entrance mentioned but that the said space is used by carriages, cabs and other vehicles of one, Leroy Eighme, exclusively.

130 This defendant further admits that the space in front of said station buildings from Adams street north, is used for various exits and entrances to said station ground, including two stair ways, to and from the tracks and the entrance to and from the ladies room and the main entrance to said passenger station with five open-

ings for receiving and delivering western baggage for the Union News Company.

This defendant denies that all the space between the north line of Adams street and the distance of about 500 feet therefrom is in constant use by the public and private carriages, cabs, omnibuses, stages and other vehicles in motion for the accommodation of passengers arriving and departing from said city upon the trains of said Companies.

This defendant neither admits or denies that between Van Buren street and Madison street on the east side of Canal street are located all of the various entrances to and exits from the eastern and western points, the United States mail to and from the same points.

This defendant further denies that all newspapers and books for trains of the United States mail enter in tu the entrances which goes directly to the power house and the tracks of the north end of said depot.

This defendant further admits that on the 31st day of December, A. D. 1885, there was passed by the Common Council of the City of Chicago and approved by the Mayor, an alleged ordinance which is published in section 1704 in the Laws and Ordinances of the City of Chicago, published in 1890, substantially as alleged in the bill of complaint.

This defendant admits that stand Number 4 is located in front of the property of the Union Depot Company, but as to whether it is the property of the said complainant, this defendant is not informed.

This defendant denies that since the passage of said alleged ordinance and against the repeated protests of said complainants 131 that licensed hacks, cabs, and express wagons accompanying by their drivers, have under the authority of said ordinance and of the Superintendent of Police of said City of Chicago, been permitted to stand or do stand on the east side of said Canal street for a distance of about 300 feet from south line of Madison street occupying the said street for said space to the exclusion of all public traffic and to the entire exclusion and use of said complainants.

This defendant denies that the said licensed hacks, cabs, and express wagons or drivers have created a nuisance to said complainants by reason of the continuous standing of horses and vehicle along said points or that it causes the City to fail in any respect whatever from keeping the said street in a clean and wholesome condition and free from the nuisancee created by horses.

This defendant further denies that the said drivers of said hacks, cabs and express wagons occupy a portion of said sidewalk on the east side of Canal street in soliciting passengers and baggage for their vehicle and in so doing have destroyed for public use that part of

Canal street so exclusively occupied by said vehicles and drivers and have injured and impaired the property rights of complainants and prevented the free use by said complainants and their property.

This defendant neither admits or denies but calls upon the complainants for a strict proof thereof, that stands number 1, 2 and 3 designated under the alleged ordinance are adjacent to or abutting upon the public property and not the private property, and that the only specific hack stand provided under said alleged ordinance in front of private property is the said stand number 4 in front of the property of said complainants.

This defendant denies that the said ordinance in so far as it creates a public stand on said east side of Canal street between
132 Adams street and Madison street is illegal and void because no such power is under its charter conferred upon the Common Council of the City of Chicago, and further this defendant denies that it subjects said complainants to an unjust burden different from that caused upon any other private property in said City of Chicago without compensation.

This defendant absolutely denies that said hack stand established by said ordinance prevents the free use of ingress and egress to and from the property of said complainants.

This defendant further admits that on the 20th day of January A. D. 1896, there was passed by the Common Council of the City of Chicago, an ordinance which went into effect on the 28th day of January, A. D. 1896, which is in words, language and figures and substantially the same as alleged and set forth in said bill of complaint.

This defendant admits since the passage of said ordinance that provides that the driver of the first double and first single vehicle in line at which said hack stand number 4 have and do claim the right to stand under the authority of the Superintendent of Police of the said City of Chicago and the power granted in said ordinance are permitted to and do stand a greater part of each day from 7 A. M. to 10 P. M. upon the sidewalk directly in front of the main entrance to the passenger station herein alleged for the purpose of soliciting business for their hacks and cabs.

But this defendant denies that the stand in front of said depot, as provided by the last aforesaid ordinance, is an injury to the said complainants, their property rights in the premises or an injury to any one of the railroads and corporations using said passenger station or that it is an annoyance of the passengers daily using the main entrance to said depot or station.

This defendant further denies that the said ordinance is wholly il-
133 legal and void or that it is not in the power of the Common Council of the City of Chicago, to pass said ordinance and it is an unjust and undue burden there upon the private property of said

complainants, that it is an infringement of their lawful rights and is wholly unwarranted by law or under any of the powers granted to the City of Chicago under its charter, but this defendant allege and avers that the said Council of the City of Chicago, has authority under its charter and under the laws of the State and has full and complete power to make and pass and to publish the said ordinance and that the same is lawful in the premises.

This defendant neither admits or denies that the passengers, parties or corporations using the space immediately in front of said station and for its entire length, whether the use is performed in connection with private carriages, express wagons, hacks, carriages, omnibuses or hearses or other vehicles do not occupy any of the said space for a longer period than is sufficient to receive and discharge passengers, baggage and United States mail for each arriving and departing train.

This defendant denies that under said two alleged ordinances the space occupied by said licensed hacks, carriages and other vehicles and the space upon the sidewalk for a hack and cab driver respectively in front of the main entrance of the said station, is placed at the exclusive disposal of the hack and cab drivers and express wagons of defendant orators and the other railways occupying said station for passengers and the public generally.

This defendant denies that the space occupied by said solicitors or said licensed hack drivers on said space prescribed by said ordinance is necessary and important for the proper transactions of the immense business to which said station and premises between said Van Buren street and Madison street are devoted or does said occupancy injuriously interfere with the privileges or the rights of the complainants in said property.

And further this defendant denies that there is any inter-
134 ference, interruption, delay, damage or annoyance to the said complainants as in their said bill of complaint allege.

This defendant further answering says, that the stand number 4, as described and set forth in said ordinance is located in front of and occupies 110 feet in front of the baggage room on the north side of said depot ground and that in front of said baggage room there are no entrances upon the said sidewalk or to the thoroughfare which are used by taking, giving and receiving of passengers, mail or baggage from said trains or depot by vehicles upon said Canal street and that the said street in front of the said baggage room is not used by said Company or said depot in any manner whatsoever.

This defendant further answering says that on the east side of said Canal street, for the space occupied as aforesaid, there is no

public traffic, no business houses or enterprises which are interfered with or damaged by the said hack stand.

This defendant further answering says that upon the premises of the said Railway Company, as shown on the plat in their bill of complaint indicated by the power house and the entrances thereto on the north end of the premises therein referred to, there are stationed hacks, cabs, coupes, and vehicles which this defendant is informed and believes belongs to one, Leroy Eighme, and that said Eighme uses the said premises and said entrances exclusively for his hacks, cabs, coupes, and that this defendant and all other licensed hack drivers of hackney cabs, coaches, etc., are deprived from the use and occupancy of said premises and the entrance referred to.

And this defendant further answering says that in the main entrance of said railroad depot station there are runners who solicit for cabs, carriages and coaches for said Leroy Eighme and that upon procuring said custom or customers, they then press an electric 134½ button to give a signal which is transmitted electrically to a certain gate building or station house at the north entrance, shown in plat, entering to the power house and in ordinance with said signal the employees of said Leroy Eighme, drive their vehicle up to and in front of the said main entrance of the said station and receive said patronage and customers.

This defendant further answering says that if the prayer in said bill for an injunction should be granted by this Honorable Court, that it will give the exclusive patronage and trade of the carrying of persons or passengers to said Leroy Eighme, and this defendant believes that this is the intent and purpose of the bill of complaint herein.

This defendant further answering says that occupancy of the said stand, as provided for in said ordinance, does not interfere in any manner whatsoever with the ingress and egress of the vehicles of the said Leroy Eighme, into, upon or from the said entrance and premises of the power house and carriage stand.

This defendant further answering says that he is informed and believes that the said complainants, their agents or employees have entered into a certain contract with the said Leroy Eighme, and that by terms of agreements therein, the said complainants have agreed with the said Leroy Eighme to give him the exclusive and sole monopoly of the passenger services of said depot and station.

This defendant further answering says that the said public hack stand creates no nuisance or damage to any person or the company depot or the said complainants and that it does not give any exclusive privilege to use it or the licensed hackmen occupying said

stand but that any and all persons are at liberty and may avail themselves of the said stand and that there is nothing to prevent or prohibit the said Eighme from occupying said stand with 135 his vehicles along with the said defendant.

This defendant further answering says that the said depot and station is a Union Depot and is constructed and built under the provisions of the statute made and provided for said Union depots and that it is the contemplation of the statute that there should be no discrimination against any public, private or quasi public hacks, cabs, coupes or omnibus line calling up, to, and upon passengers on said station with every convenience and accommodation for carrying and transporting of said passengers.

This defendant further answering says that upon the allegations in said bill of complaint, to-wit: Two Hundred and Thirty-three trains (233) coming into said depot each twenty-four (24) hours, that that would be an average of one train in every 6-42/233 minutes and that it is a reasonable and just provision of the ordinance that common carriers of persons should call up to the said station for patron and passengers a reasonable time before the arrival and departure of said trains and that if the said defendant and the hack drivers on said stand were given the privilege together with the right to come upon the said thoroughfare, cabs, carriages and other vehicles before the arrival of said trains, then they would occupy the said thoroughfare for the entire day.

This defendant further answering says that in front of the entrances of said depot there are always on the street thereof a large number of hotel runners to call out for patronage and passengers and that the same has continued for a long number of years, and that on or about the 1st day of January, A. D. 1895, there was added to the said runners two or three solicitors for runners two or three solicitors or runners for hacks and cabs and that the said runners were given and are now given the privilege of standing upon the stairs and at the head of the stairs at the main entrance of said depot to solicit patronage for the said Leroy Eighme, a party 136 herein referred to, and that the addition of two persons as solicitors, as provided for in said ordinance, cannot increase the damage or annoyance which exists there now by reason of the said hotel runners, porters and solicitors for said Eighme.

This defendant further answering denies that the said Union depot and railroad property is private property of said complainants but that it is quasi public property and subject to the general police regulations made for the convenience of the passengers and patrons of said railroad and that the said ordinance is a great benefit, advantage and privilege to said patrons and passengers because it

prevents the necessity of walking from the entrance of said railroad station north 50 to 150 feet for the purpose of procuring a hack, carriage or coupe but that upon any person hiring said hack from such driver or owner, then he can send for his vehicle and transport the persons immediately from in front of said entrance.

This defendant further answering avers and allege that the said ordinance did not give any rights and privileges which interferes with the trade, the buss line or any other vehicle or private carriages coming up, to or using the said Union Depot.

This defendant further answering says that as far as the bill of complaint and the allegations therein made in this cause, there was no damage, injury or inconvenience shown to exist to the detriment of the said complainants.

This defendant denies all the unlawful acts, ordinances or combinations in said bill wherewith he is charged, without this, there is no other matter, cause or thing in the complainants said bill of complaint contain material or necessary for this defendant to make answer unto and not herein and hereby well and singly answer, confessed, traversed and avoid or denied, is true to the knowledge and belief of this defendant all which matters and things this defendant is ready and willing to verify and therefor prays that
137 the said injunction prayed in said bill of complaint heretofore and also by an order of this Court may be dissolved, set aside and vacated and that the bill of complaint may be dismissed and that this defendant and the City of Chicago, may be hence dismissed with their reasonable costs in this behalf most wrongfully sustained.

WALTER OWEN. (Signed.)

SEYMOUR STEDMAN,
Solicitor.
H. C. FAUCHER,
of Council.

Walter Owen being first duly sworn on oath deposes and says that he has read the foregoing bill of complaint and that the same is true of his own knowledge except wherein stated to be upon information and belief.

WALTER OWEN.

Subscribed and sworn to before me this 10th day of March, A. D. 1896.

JACOB ROTHSCHILD,
Notary Public.

[SEAL.]

138 DEFENDANTS' EXHIBIT "C."

The Pennsylvania Company, *et al.*
vs.
The City of Chicago, *et al.*

OPINION FILED OCTOBER 16, 1899.

Mr. JUSTICE PHILLIPS delivered the opinion of the Court:

The Pittsburg, Ft. Wayne and Chicago Railway Company one of the plaintiffs in error, is the owner, and the Pennsylvania Company, the other plaintiff in error, is the lessee, of the tract of land occupied by the Union Passenger Station in Chicago, bounded by Madison, Van Buren and Canal streets and the Chicago River. Several railway companies use this station under an agreement which provides that the Pennsylvania Company shall have control of the station and property. It is alleged that passenger trains to the number of 233 arrive and depart from the station every twenty-four hours; that the average daily number of passengers arriving and departing is over 31,000; that the pieces of baggage received and delivered daily number over 2900, and the United States mail received and delivered averages 178 tons per day. The passenger station fronts on Canal street, and the entire length of the building on that street is 1070 feet, with thirty entrances in constant use in the transaction of business. There are five other stations at different places in Chicago. All tickets beyond the terminus at Chicago, and known as "through tickets," have attached thereto a coupon for conveyance through the City of Chicago from this station to the station of the connecting line of railway, and each railway company entering the station has a contract for the use of a line of coaches for the performance of this service called for by the coupon. All coaches and wagons leav-

139 ing the railway station perform this service of carrying passengers and baggage, and stand in front of the station as long as necessary to receive passengers, baggage and mail.

On December, 31 1885, the city council of the city of Chicago passed an ordinance establishing stands, which was approved by the mayor, and which provided that "any duly licensed hackney coach, cab or other vehicle for the conveyance of passengers may stand, while waiting for employment, at any of the following places: Stand No. 1: The north side of Washington street, between Clark and La Salle streets. Stand No. 2:—That portion of the west side of Clark street beginning fifty feet from the south west corner of Randolph and Clark streets and running thence to Washington street. Stand No. 3:—The east side of La Salle street, between

Washington and Randolph streets. Stand No. 4. The east side of Canal street, occupying one hundred and ten feet, between Adams and Madison streets as the superintendent of police shall direct. Stand No. 4:—All theatres and other places of amusement public fifteen minutes before the conclusion of the performance. Stand No. 6: At all railroad depots ten minutes previous to the arrival of all passengers trains. Stand No. 7: On all such street corners from ten P. M. until sunrise, as the superintendent of police shall designate. Stand No. 8:—At such other places where the occupants of the premises in front of which it is desired to stand for employment shall give permission, in writing to the owner or driver so to do, and it shall be approved in writing by the superintendent of police. Provided, it shall not be lawful to stand for employment in front of a hotel where such stand has been established on the opposite
140 side of the street from such hotel.

On January 20, 1896, the city council passed another ordinance as follows: "That when, at or near any railway passenger depot in the city of Chicago, a place has been or shall be designated as a licensed carriage stand, it shall be lawful for the driver of the first double and first single vehicle in line to stand in front of such railroad depot and solicit business, provided such driver shall not, in so soliciting business, obstruct the sidewalk or stand thereon at a greater distance than two feet from the curb line."

Hack stands Nos. 1, 2 and 3 are in front of public property. Hack stand No. 4 is in front of the railroad station. Plaintiffs in error allege in their bill that since the passage of the ordinance this stand in front of the station das had hacks, cabs and express wagons standing continuously against the protest of the complainants, in front of the station for a distance of about three hundred feet from the south side of Madison street, and that they occupy this stand coutinuously from seven o'clock A. M. until 10 o'clock P. M. and the drivers occupy a part of the sidewalk, soliciting passengers and baggage. It is averred that fifteen hacks and coupes and six express wagons, and from eighteen to twenty men, are at this hack stand continuously during the hours named; that twenty three to twenty five horses are fed daily at the stand, and that the drivers of the first single and first double vehicles have stood in front of the main entrance of the passenger station soliciting business.

On February 24, 1896, the plaintiffs in error filed their bill alleging the foregoing facts, and charged that the space in front of
141 the station is necessary for the transaction of the business to which the station is devoted; that said ordinances are illegal and void; that the interference, interruption and daily damage and inconvenience to complainants and occupants of the station consti-

tute irreparable damage; that the hack stand prevents ingress and egress to and from their property, and that its establishment is a damage and interference with their private rights, and causes an unjust burden upon their property without compensation, and gives for a private use a portion of Canal street in front of their property which is held in trust by the city of Chicago solely for use as a public street. The City of Chicago and John J. Badenoch, superintendent, were made defendants, and the bill prayed for an injunction restraining them from continuing the stand for hacks and express wagons, and from permitting the drivers of first single and first double vehicles to occupy the sidewalk in front of the station for the purpose of soliciting passengers.

On leave granted for that purpose, Thomas J. Doyle, and Walter Owen, representing the hackmen occupying this stand were admitted to the suit and filed answers denying that the ordinances are illegal; or that the hack stand prevents complainants from the use of, or ingress to and egress from their property; or that the space in front of the station is necessary for the transaction of the business of the station, or that the portion occupied by the hack stand is necessary or important for such business; alleging that along the entire space occupied there is no public traffic which is interfered with or damaged by the hack stand, and that on the station grounds and premises of the complainants, and at the entrance to the power house, are stationed hacks and cabs belonging to another proprietor, which
142 wait there for passengers by an arrangement with the complainants.

No answer was filed by the city of Chicago, but it appeared by its corporate counsel. Replications were filed to the answers of Doyle and Owen, and on the hearing, by agreement the application for injunction was made a final hearing, and affidavits were filed in support of the bill and answers. On hearing the circuit court found that the ordinance passed by the city of Chicago on the twentieth day of January, 1896, and which went into force on the twenty eighth day of January, 1896, entitled "An ordinance regulating the drivers of vehicles at railroad depots" was illegal, null and void, and the enforcement thereof should be restrained, as prayed in complainants' bill of complaint. The Court further found that the ordinance passed by the common council of the city of Chicago on the thirty first day of December, 1895, entitled "An ordinance establishing hack stands" published as section 1705 in the laws and ordinances of the city of Chicago published in 1890, is a valid ordinance so far as it establishes stand No. 4, upon the east side of Canal street, occupying one hundred and ten feet between Madison and Adams streets as the superintendent of police shall direct, and that said ordinance

is a reasonable and valid exercise of the powers conferred upon the common council of the city of Chicago to the extent of the frontage of one hundred and ten feet named in said ordinance.

The title of the street is vested in the city, and it has the conversation, control, management and supervision of such trust property, and it is its duty to defend and protect the title to such trust estate. The city has no power or authority to grant the exclusive use of its streets to any private person or for any private purposes, but
143 must hold and control the possession exclusively for public use, for purposes of travel and the like. (Field *v.* Barling, 149 Ill. 556;) Hibbard & Co. *v.* City of Chicago, 175 id. 91, Barrows *v.* City of Sycamore, 150 id. 588; Ligare *v.* City of Chicago, 139 id. 46). The rule is, that all public highways, from side to side and from end to end, are held for the use of the public, and no other safe rule can be adopted. It does not follow, homever, that every obstruction of a street would constitute a purpresture or be illegal. Necessary and temporary obstructions of the streets for the purposes of or incident to their repair and interruptions caused by the improvement of adjoining lots if not continued for an unreasonable time, are not such encroachments as would amount to a public nuisance. The construction of street railroads, the erection of telegraph and telephone poles and the running of stage lines are all increased burdens on the streets which may be authorized by the municipality. A stage line running along the street, or cabs to be used by persons desiring that method of locomotion, would have a right to stop and take up and discharge passengers and use the streets for such public ue, but mere inconvenience to the owner of property by reason of a hack hailed to stop in front of his premises a sufficient period of time for one to mount or alight would not give such owner the right to resort to a court of equity and have an injunction. The use of the streets or highway with the consent or acquiescence of the municipal authorities cannot be enjoined at the suit of an abutting property owner. This court has frequently determined this question and held that where an additional use of the street has been granted
144 by the city an injunction will not be granted to restrain such use, as the right to so occupy is a question between one so occupying and the municipality having the control of the streets and charged with the duty of keeping the same free from unlawful obstructions and protect the public. The remedy of an individual—the abutting owner—is an action for damages for an injury resulting to his property by reason of what is claimed by him to be a use of the street inconsistent with his rights. He cannot, however, be per-

mitted to invoke the remedy by injunction for the protection of the public, and under that guise seek to protect himself.

Murphy v. City of Chicago, 29 Il., 279.
Corcoran v. Chicago, Madison, & Northern R. R. Co. 149 id. 291.
Deane v. Lake St. Elevated R. R. Co. 165 id. 510, and cases cited.

The depot of the complainants, extending over one thousand feet in length, is for the use of its passengers entering therein or departing therefrom over the different lines of railways which receive and discharge passengers therein. A railroad company, whilst in a certain sense a private corporation, is in many other respects a public corporation and amenable to public control, and different from a mere private corporation. Such a corporation is vested with extraordinary powers, under which it may condemn a right of way, and by the exercise of eminent domain take to its own use, on payment of damages (or, rather, of compensation) found by a jury, the property of others against the will of the owners, and use and exercise control over it for its corporate purposes. Invested with such power it becomes more than a mere private corporation, and in consequence of its vested powers, in every character, it partakes of a public corporation, and is, and always must be, held amenable to public
145 control.

One of the duties discharged by the various railroads entering this depot is the carriage of passengers. From the facts shown by this record, on an average over thirty one thousand passengers are received and discharged daily at this depot. There are five other depots in the city of Chicago at which passengers arrive and depart. The transfer of passengers from one railroad depot to another, or their transfer to various places in the city which they may be desirous of reaching renders means of transportation necessary by which passengers so arriving and desiring to depart may have access to the various railroad depots or to other places in the city to which access is desirable, and this, in many cases, is most conveniently met on the part of the traveling public by the use of hacks which, to be of advantage, must be so accessible that unnecessary waste of time and inconvenience in trying to find the same may not result.

Recognizing that the use of this depot for the purposes for which the land was acquired on which the building was erected, and the use of the same by the railroad companies having access thereto, cannot be prejudicially interfered with by any ordinance of the city to the damage of the complainants, the question as to public and private rights if presented. It does not appear that ingress to and

egress from complainants' property is prevented in connection with the complainants' building. It does appear that those who control this depot (complainants herein) have permitted other persons to have a lease on certain ground belonging to and connected therewith, on which such persons may stand their cabs and carriages while awaiting passengers thus arriving at said depot.

146 Taking into consideration the character of buildings such as depots of the railroads in the city, and recognizing their right to exercise the power of eminent domain, it may be held that such buildings are in the nature of public buildings. It has never been held that the city council may not establish hack stands in front of public buildings in the city, and no public want of access to such a convenience as hack stands can be greater on the part of the traveling public at any other point than at the depots of the city. A hack stand cannot of itself, interfere with passenger or freight traffic of a railroad unless it prevents access to or egress from its buildings. In Doane v. Lake Street Elevated R. R. Co., supra, it was held (p. 519).

"The real ground upon which relief by injunction is denied in such cases is, that the use of a street, being within the purposes for which it is laid out, and therefore a proper use, the right to occupy is properly a question between the defendant and the municipality having control of its streets and charged with the duty of keeping them free from unlawful obstructions, or between the defendant and the public generally, the individual being left to his action for damages for any injury resulting to his property."

It appears from the record that certain property owned by the complainants and adjacent to the depot was leased to one Leroy Eighme for use as a hack stand, and that the lessee by using the property and excluding others therefrom, would have privileges of access to the depot and of carrying passengers which others would not have. While we recognize that the companies which control the depot grounds and buildings may make needful rules for their regulation, yet they cannot grant special privileges beyond the limits of their own land, and make a contract with one which gives him the right to carry passengers from the depot beyond their own line and exclude others from such privilege of carriage. If such companies control the transportation of passengers and mer-

147 chandise beyond their own lines, such power might be exercised solely for their own benefit and not for that of the public. They cannot make a rule under which certain persons are allowed to occupy the streets or control travel and exclude others therefrom, regardless of any wrong doing or misconduct on the part of the

persons so excluded. An attempt to exercise a power of that character would be unreasonable and unauthorized under the law.

Montana Union Ry. Co. v. Langlois, 8 L. R. A. 762 and authorities cited.

Old Colony Ry. Co. v. Tripp, 142 Mass. 35.

Schmitt v. State, 8 Lea, 13.

Kalamazoo Hack & Bus Co. vs. Sootsma, 84 Mich. 194 was a case where a construction company operating a railroad had leased to the plaintiff a piece of land used for depot purposes in the city of Kalamazoo, to be used by it for carriage and hack stand purposes only. Notices of the lease were posted up, and the superintendent of the railroad company also notified others that the property was for the exclusive use of the lessee company. The defendant placed his hack on the ground, and on being notified to leave, refused to do so and remained there until an incoming train, when he procured a passenger and drove away with him, whereupon the hack company sued in trespass. The court say:

"The granting of this exclusive privilege to occupy this favored spot of ground, and one theretofore used customarily by all hackmen and busmen, to the plaintiff, was a discrimination against the defendant as well as all other hackmen not in the employ or service of the plaintiff, thus giving to the plaintiff a monopoly of the railroad company's grounds for the standing of hacks and busses and the soliciting of passengers therefor . . . . and is contrary to
148 the provision of the statute that 'all railroad corporations shall grant equal facilities for the transportation of passengers and freight to all persons, companies or corporations.' "

The Court further say:

"This statute evidently does not relate entirely to the mere carriage on cars of the road. To be effective it must be construed to include also not only the receiving of such passengers and freight at its depots, but as well the receiving of them by other persons, companies or corporations at the point upon its road where the carriage ends. The access to its grounds must be free and equal to all, whether it be to take passage or leave the trains. No railroad company, under this statute, should be permitted to give to one hack or bus company exclusive access to its depots in the carriage of passengers or freight to its trains. Nor can it any more properly give such exclusive or better privilege to such company taking passengers or freight from its trains to be transported from them elsewhere. But, independently of the statute, the plaintiff could not recover in this case. A railroad company can make all needful reasonable rules and regulations concerning the use of its depots and grounds, and can exclude all persons therefrom who have no busi-

ness with the railroad or passengers going to and coming from the trains or depots, and it probably can prohibit all persons from soliciting passengers there themselves upon its premises, but it cannot arbitrarily admit one common carrier of passengers or freight to its depot or grounds and exclude all others for no other reason than that it is for its own private profit or pleasure. Such rules and regulations must touch and effect all alike. It may determine
149 the distance from its depots or tracks at which persons soliciting passengers may stand while on its grounds, but this determination must affect and apply to all. To permit a railroad company, upon any charge except of wrong or misconduct on the part of the person excluded, to allow one hackman or line of hacks to occupy a place upon its grounds which is denied to another, or to set apart the most favorable ground, as in this case, to one company and to exclude the others therefrom, would be, in the language of Justice Field, In Railroad Co. v. Tripp, 147 Mass. 41, 'to enable a railroad corporation largely to control the transportation of passengers and merchandise beyond its own line, and to establish a monopoly not granted by its charter, which might be solely for its own benefit and not for the benefit of the public.'"

Montana Union Railway Co. v. Langlois, 9 Mont. 419, was an action for an injunction brought by the railway company against the defendant, in which the bill, answer and stipulated facts showed that the railroad company had contracted with Lovell Bros. by which contract they were to carry the mail for the railway company from its station to the postoffice, in consideration of which they were to have the exclusive use of certain grounds belonging to the complainant, which it had enclosed. The defendant had insisted in driving his wagons and busses onto said lands and leaving them standing on the ground, the exclusive use of which had been granted to said Lovell Bros. The Court, on hearing, dissolved the temporary injunction granted, and based their reason for so doing on the ground that to permit the injunction to stand, restraining other cab drivers than Lovell Bros. to whom the exclusive use had been given, from using the depot grounds, would aid in causing a monopoly, destroy just competition and cause thereby a hardship not only on other
150 cab drivers but on the general public. The Court City Marriott v. London & Southery Ry. Co. 1 Com. B. (N. S) 499, in which case the complainant alleged that he brought passengers to the defendant's railway station and the latter refused him access to the station grounds to deliver his passengers there, while at the same time this privilege was granted to other companies, and upon this showing the injunction was granted.

McConnell v. Pedigo & Hays, 92 Ky. 465, was a case in which a

contract similar to that in the case last above cited had been entered into between the railroad company and McConnell by which an exclusive privilege was sought to be given to him in consideration that he would carry the mails for the company. The injunction sought was denied. To the same effect in the recent case of State v. Reed, 76 Miss. 211.

The law furnished a full and complete remedy to the complainants for any injury to their property by the creation of a hack stand by the city. The complainants may for any injury sustained have a remedy at law separate and distinct from the public interests, and have compensation granted for damages sustained, which can be determined and admeasured by a jury, without resort to the extraordinary remedy by injunction. (Chicago & Western Indiana R. R. Co. v. Ayers, 106 Ill. 511; Bigney v. City of Chicago, 102 id. 64, Lake Erie & Western R. R. Co. v. Scott, 132 id. 429, Doane v. Lake Street Elevated R. R. Co. supra) These complainants cannot, in the interest of the public, resort to this remedy, and have shown no special or peculiar injury to their property entitling them to an injunction.

There was no error in the decree of the circuit court and its decree is affirmed.

Decree affirmed.

151 DEFENDANTS' EXHIBIT "D".

I would respectfully suggest that this company adopt a set of rules excluding all solicitors from the train shed and I think that it can be so arranged that all noisy solicitations can be avoided in the carriage court. I would suggest that omnibuses be allowed to back up to the south curb occupying the west half of the court, that east of them and along the south curb not to exceed four public carriages be allowed to stand at any time. That the west curb remain for the unloading of omnibuses and the east curb for the unloading of carriages.

There is a public hack stand along the entire north side of Harrison street extending from 5th Avenue to Franklin street and I understand that the rules governing them, is that the head carriage stand nearest 5th Avenue. I would suggest that no carriages be allowed in the court earlier than 15 minutes before the earliest train is due in the morning and when the times between which trains are due exceeds one half hour that the standing carriages be compelled to leave the carriage court to return not more than 15 minutes before the next train is due. That not exceeding four carriages be allowed to enter the court when a train is expected and take their places ac-

cording to their order of precedence the same as when they were previously at the hack stand across the street, that is the four leading carriages no matter whom they belong to may leave their places at the head of the line across Harrison street and take their places in the court, then as fast as they are filled and new carriages required they may come from the head of the line across the street, and I find that their will be no difficulty in communicating without noise to the ones at the head of the line. The center of the court can be occupied by carriages coming by appointment to meet travelers and when called can take their passengers at the south east
152 corner of the court. No driver should be allowed to leave his cab or horses to solicit business and should be required to be orderly in designating his cab in the carriage court. Signs could be placed indicating the exits reaching to the carriages and to the omnibuses. No intoxicated driver should be allowed to remain in the carriage court and no carriage should be allowed to stand in the court after it becomes apparent to whomsoever may be stationed there that he has been rejected by travelers by reason of the appearance of himself or his cab after a reasonable time.

A strict rule should be adopted, that no express wagons or other vehicles excepting for passengers be allowed in the carriage court under any pretext whatever. Whenever any wagon comes with supplies for dining cars or private cars it should be unloaded elsewhere than in the carriage court. One rule should be strictly enforced and that is that no driver who brings outgoing passengers be allowed to leave his horses and accompany his passenger or passengers with baggage into the depot, but he should be compelled as soon as he has unloaded to leave the court.

Where I have above referred to the division of the south curb between omnibuses and carriages the dividing line perhaps should not be in the middle but my idea would be to allow sufficient room for four carriages on the east part of the south curb and the space west of them for omnibuses.

Any hack driver in the court refusing to accept a passenger at the regular rates of fare should be forced out of line and his place taken by another.

(Part of letter to President, Faithorn from Gen'l atty. Barton, January 7", 1902.)

(Endorsed) Filed Mar. 8, 1902, S. W. Burnham, Clerk.

153 And on to-wit: the eighth day of March, 1902, there was filed in the clerk's office of said court in said entitled cause the affidavits of Walter Owen, George Baude, Albert Riley, Robert S. Taylor, William Gaynor, S. Finkelstein, Louis Elman, H. W. Fall, Adolph W. Leven, Bernard McFane, John Vaughn, Alfred Rice, Herman W. A. Hacker, Artur Stein, James H. Sperbeck, which said affidavits are respectively in the words and figures following to-wit:

154 State of Illinois } ss.
County of Cook }

Walter Owen, being duly sworn on his oath, says, that he is of lawful age and a licensed cabman of the City of Chicago and has been for more than one year last past a cabman in the City of Chicago and stands and has his horse and cab awaiting for employment upon the Puplic Hack stand No. 4 on the east side of Canal street about four hundred (400) feet north of the main entrance to the Union Passenger Station on Canal street in the City of Chicago, and that affiant and one other cabman stand outside of the main entrance of the said Union Passenger Station upon the sidewalk adjacent to said station and where some of the solicitors and employees of the Parmalee Trasfer Company, referred to in the bill of Complaint aforesaid, stan d and solicit passengers for the carriages and buses of said Comtrance, this affiant and said other cabman with him stand for the purpany, and that at said place upon said sidewalk in front of said enpose of meeting and receiving such passengers as are brought to affiant and his said co-cabman by other cabmen from within said entrance to said Station and which passengers desire cab accommodations, and that upon announcement being made to affiant and his said co-cabman that such passengers do desire such accommodation, affiant and his said co-cabman signal or notify and call some of the cabmen standing upon said Hack Stand for one or more cabs, as the case may be, to come forward and receive the said passenger or passengers. And that thereupon the custom ond practice is for such cabman to come forward with the cab, receive and convey away such passenger or passengers, and that in so coming forward, drive down to the sidewalk a short distance from the said main entrance and there receive the said passenger or passengers as aforesaid.

Affiant further says that two cabmen, who have hacks or cabs standing upon said Public Hack Stand, stand inside of the en-
155 trance of the said Union Passenger Station at said main entrance at the place designated by the complainant where the said solicitors for said Parmalee Transfer Company stand and solicit passengers who are not provided with through tickets for the carriages of

said Company, and that at said place within said station, said two cabmen solicit for their cabs and other cabmen's cabs who occupy said Hack Stand; and that their manner of solicitation for said cabs is in the same manner that the said Parmalee Transfer Company's agents solicit passengers for the carriages and buses of said Company, by simply announcing to persons going in and coming out of said entrance, "cab" and "carriage", and that at no time are there more than two cabmen within the said entrance so soliciting passengers on incoming trains for their cabs, except the persons in the employment of the Parmalee Campany, aforesaid. And that there are at said station within said main entrance two other solicitors who are soliciting passengers who arrive and depart from said station to ride in the carriages of the said Parmallee Company; and that there are not more than four persons at any time within said Station in the main entrance soliciting passengers for conveyance in cabs and carriages.

Affiant further says that the said agents of the said Parmalee Company have a collector standing in the main entrance collecting tickets from what are called, "through passengers" and selling tickets to passengers who desire conveyance in carriages, and that said ticket collector collects and sells tickets at the said place; that said Parmalee Transfer Company have from three to six buses standing all day upon Canal Street in front of the said main entrance of said Station to receive passengers on incoming trains, from which part of the street all cabmen of the City of Chicago are excluded from standing their cabs or vehicles, they being compelled under the Police
156 regulations of the City, to keep their cabs and horses at a distance of about four hundred (400) feet north of said main entrance.

And affiant further says that he and said other cabmen who stand with him on said slidewalk and the said cabmen who go within the entrance of said Station, do not solicit what are called "through passengers" who have tickets for a continuous ride through the City of Chicago, that they have procured through railroad companies or the Parmalee Transfer Company upon the train coming to the City of Chicago, and that when they, said cabmen meet a passenger who has a through ticket, they direct them to the said Parmalee Company or its agents who are in charge of that class of passengers, as said cabmen are not engaged in carrying passengers with through tickets or passengers who have so procured tickets of the Parmalee Transfer Company upon the trains.

And that this affiant and said other cabmen with him and said cabmen who go within said Station as aforesaid, instead of obstructing ingress and egress to and from the main enrtance of said station, aid and assist incoming passengers on interstate, local and suburban

trains from said station and relieve the crowded condition that occurs at and near said main entrance sometimes, by directing those who have through tickets or tickets for conveyance over said Parmalee Transfer Company's line to the agents of said Transfer Company and by providing others with cabs to convey them to where they may desire to go and who are not provided with tickets or conveyances.

Affiant further says that he and said other cabmen with him as well as said cabmen within the said entrance, do not molest, impose upon or in any way wrongfully interfere with any person or
157 passengers who arrive at or depart from said station on incoming or outgoing trains; and that during the day there are stationed at the said main entrance three city police men of the City of Chicago, to see that all persons who arrive at and depart from said station on passenger trains are not wrongfully interfered with by cabmen or expressmen or other persons; and that said cabmen who so stand upon said sidewalk at said entrance and within said entrance, solicit and care for passengers as affiant has above set forth; do not use vulgar or profane language or chew tobacco and expectorate upon the floor of said Station, or upon the side walk in front of said entrance, or grab the baggage of said passengers who arrive at said station, or touch their baggage unless the said passengers desire that said cabmen take their baggage, and that this affiant is about the main entrance of said station all day, and that he sees all that takes place there and that the cabmen who are defendants in the said suit at all times and under all circumstances treat all persons who arrive at and depart from said station with courtesy and respect, and that all the said cabmen at all times in the discharge of their duties as cabmen, deport themselves in a peaceful, quiet and gentlemanly manner, and that they do not in any way injure the property of the complainant or damage or injure in any way the business of the Pennsylvania Company, complainants aforesaid, nor do said defendants obstruct the main entrance to and from the said station to the extent that it is obstructed by the Parmalee Transfer Company, its agents, servants and employees, nor do said cabmen obstruct the street directly in front of the main entrance to and from said station and that said portion of the street last aforesaid is used wholly by the said Parmalee Transfer Company in standing its vehicles and to the exclusion of the cab and expressmen, who are defendants in said suit.

Affiant further says that he and the other cabmen who stand on the said sidewalk in front of said main entrance and within
158 said main entrance of said station soliciting and caring for passengers as aforesaid for their vehicles, wear neat and clean clothing and are respectfully dressed, and wear a gilt braid about

their caps with the words "cab Agt." inscribed, said caps to notify persons that they are cabmen that they convey for hire, persons desiring conveyance and for the purpose of showing to the Public that they are in no way connected with the said Parmalee Transfer Company, or with any other person and for themselves and the cabmen who occupy said Public Hack Stand.

WALTER OWEN.

Subscribed and Sworn to before me this 8th day of March, A. D. 1902.

JACOB C. LEBOSKY,
[SEAL] *Notary Public.*

(Endorsed) Filed March 8, 1902, S. W. Burnham, Clerk.

159 CIRCUIT COURT OF THE UNITED STATES.

Northern District of Illinois.

Northern Division.

Thursday, February 27, 1902.

Present: Hon. Christian C. Kohlsaat, District Judge.

Pennsylvania Company,
vs.
Harry Donovan, George Callahan, Charles Lewis, M. M. Lee, Joseph Ward, W. H. Ashley, R. S. Taylor I. Gauthier, I. Vaughn, Sanford McGill, George Baude, J. Baude, Albert Reily, James Casey, Thomas Casey, Edward Devaney, W. Owens, John Kerr, A. Johnson, Tom Quinlan, John Tievens, M. Brady, George Quinlan, George Gustin, John O. Toole, Nicholas Stokes, C. Connell, James Sullivan, Patrick Quinlan, C. Cunningham, J. Vaughn, Peter Taylor, William Simmons, Patrick Regan, James Regan, Jahn J. Casey, M. Crawley, M. Geary, A. Cook, Charles P. Engel, Eugene Gibbs, and John Casey. } 26191

160 State of Illinois, } ss.
Cook County, }

George Baude, being duly sworn upon his oath, says that he is of lawful age and a licensed cabman of the city of Chicago and has been

for more than a year last past a cabman in the city of Chicago, and that Harry Donovan, George Callahan, Charles Lewis, M. M. Lee, Joseph Ward, W. H. Ashley, R. L. Taylor, I. Guthier, I. Vaughan, Sanford McGill, George Baude, J. Baude, Albert Riley, James Casey, Thomas Casey, Edward Devaney, Walter Owen, John Kerr, A. Johnson, J. Vaughan, John J. Casey, M. Crawley, A. Cook, Charles P. Engel and John Casey, defendants in the above entitled suit, are licensed cabmen of the city of Chicago, and M. Brady, Patrick Quinlan and the above entitled suit are runners, and that Tom Quinlan, John Tievers, George Quinlan, George Gustin, John O. Toole, Nicholas Stokes, C. Connell, James Sullivan, C. Cunningham, Peter Taylor, William Simmons, Patrick Regan, James Regan, M. Gary, Eugene Gibbs, defendants in the above entitled suit are licensed expressmen of the city of Chicago.

Affiant says his horse and cab stands and waits for employment upon public hack stand No. 4 on the east side of Canal street about four hundred feet north of the main entrance to the Union passenger station on Canal street in the city of Chicago. That he and one other cabman stand inside of the entrance of the Union passenger station and at the said entrance at the place designated by the complainant where the solicitors for the Parmalee transfer companies' agents stand and solicit passengers who are not provided with through tickets for the carriages of said company, and that at the said place in the said station this defendant and said other cabmen solicit for their cabs and other cabmen's cabs who occupy the public hack stand with their cabs, and that their manner of solicitation for said cabs is in the same manner that the Parmalee transfer agents solicit passengers for the carriages of the said company by simply announcing to persons going in and coming out of the said entrance "Cab" and "Carriage." And that at no time are there more than three cabmen within the Union passenger station soliciting passengers on incoming trains for their cabs except the persons in the employment of the Parmalee company aforesaid. And that there are in said
161 station at said main entrance two other solicitors who are soliciting passengers who arrive at and depart from the said station to ride in the carriages of the Parmalee Company. And that there are not more than four persons at any time within the said station in the main entrance soliciting passengers for conveyance in cab or carriages.

That the said agents of the said Parmalee company have a collector standing in the main entrance of the said station collecting tickets from what are called "through passengers" and selling tickets to passengers who desire conveyance in carriages. And that the said ticket collector collects and sells tickets at the said place.

That the said Parmalee Transfer Company have from three to six busses standing all day upon Canal street in front of the main entrance to the said station to receive passengers on incoming trains from which part of the street all cabmen of the city of Chicago are excluded from standing their cabs or vehicles, they being compelled under the police regulations of the city to keep their cabs and horses at a distance of about four hundred feet north of the main entrance of the said station. That when the two cabmen who go into the depot, soliciting passengers for the cabs and other cabs standing upon the said public hack stand, waiting for employment, the passenger is taken out upon the street where two other hackmen are standing who notify the cabmen upon the public hack stand that they desire a cab and then the cab or cabmen desired to take the passengers who have been procured drive down to the sidewalk a short distance from the main entrance and receive passenger or passengers and convey them to where they wish to go, and that the cabmen within the station who delivers the passenger he has procured to the cabman upon the sidewalk returns to within the said station and takes his position there where the agents of the Parmalee company stand and solicit passengers for its carriages and continues his business as a cabman.

Affiant further says that he does not and the other cabmen within the station do not solicit what are called "through passengers" who have tickets for continuous rides through the city of Chicago, which they have procured from railroad companies or the Parmalee transfer company upon the train coming into the city of Chicago. And that when they meet a passenger who has a through ticket they
162 direct them to the Parmalee company or its agents who are in charge of this class of passengers as they are not engaged in carrying passengers with through tickets or passengers who have procured tickets of the Parmalee transfer company upon the train.

And that this affiant and the other cabmen with him within said station at said main entrance instead of obstructing ingress and egress to and from the main entrance of the said station aid and assist incoming passengers on interstate, local and suburban trains from said station and relieve the crowded condition that occurs there sometimes by directing those who have through tickets or tickets for conveyance upon the Parmalee transfer company's busses and to its agents, and providing others with cabs to convey them to where they may desire to go who are not provided with tickets or conveyances.

Affiant further says that he and the other cabmen within the station do not molest, impose upon or in any way wrongfully interfere with any persons or passengers who arrive at or depart from the said

Station on incoming trains or outgoing trains. And that during the day there are stationed at the said Station entrance and that portion of the said Station three city policemen of the city of Chicago to see that all persons who arrive at and depart from said Station on passenger trains are not wrongfully interfered with by cabmen and expressmen or other persons.

Affiant further says that he and the other cabman who stands within the station aforesaid soliciting passengers for their cabs, and other defendants cabmen and expressmen, do not use vulgar or profane language or chew tobacco and expectorate upon the floor of said Station, or grab the baggage of passengers who arrive upon trains at said Station, or touch their baggage unless the said passengers desire that they take the baggage; and that this affiant is about the main entrance of the said station all day and that he sees all that takes place there, and that the cabmen who are defendants in the said suit at all times and under all circumstances treat all persons who arrive at and depart from the said Station with courtesy and with respect, and that all the said cabmen at all times in the discharge of their duties as cabmen deport themselves in a peaceable, quiet and gentlemanly manner, and that they do not in any way injure the property of the complain-
163 ant or damage or injure in any way the business of the Pennsylvania Company, complainant herein. Nor do defendants, cabmen, obstruct the main entrance to and from the said station to the extent that it is obstructed by the Parmalee transfer company, its agents, servants and employes. Nor do they obstruct the street directly in front of the said main entrance to and from the said Station, and that that portion of the street is used wholly by the said Parmalee transfer company in standing its vehicles there and to the exclusion of the cab and expressmen who are made defendants in this suit.

Affiant further says that he and the other cabmen who stand inside the said Station, soliciting passengers for their vehicles, wear neat and clean clothing and are respectfully dressed, and wear a guilt braid upon their caps with the word "Cab Agt." inscribed upon said caps to notify persons that they are cabmen and that they convey for hire persons desiring conveyances and for the purpose of showing to the public that they are in no way connected with the Parmalee company or with any one else other than for themselves and for the cabmen who occupy said public hack stand.

GEORG H. BAUDE.

Subscribed and sworn to before me this Seventh day of March, A. D. 1902.

[SEAL]

RICHARD E. DOOLEY
Notary Public

164 Albert Riley, being duly sworn upon his oath, says that he is of lawful age and a licensed cabman of the city of Chicago and has been for more than three months last past a cabman in the city of Chicago, and that Harry Donovan, George Callahan, Charles Lewis, M. M. Lee, Joseph Ward, W. H. Ashley, R. L. Taylor, I. Guthier, I. Vaughn, Sanford McGill, George Baude, J. Baude, Albert Riley, James Casey, Thomas Casey, Edward Devaney, Walter Owen, John Kerr, A. Johnson, J. Vaughn, John J. Casey, M. Crawley, A. Cook, Charles P. Engel, and John Casey, defendants in the above entitled suit, are licensed cabmen of the city of Chicago, and M. Brady, Patrick Quinlan and the above entitled suit are runners, and that Tom Quinlan, John Tievers, George Quinlan, George Gustin, John O. Toole, Nicholas Stokes, C. Connell, James Sullivan, C. Cunningham, Peter Taylor, William Simons, Patrick Regan, James Regan, M. Gary, Eugene Gibbs, defendants in the above entitled suit are licensed expressmen of the city of Chicago.

Affiant says his horse and cab stands and waits for employment upon public hack stand No. 4. on the east side of Canal street about four hundred feet north of the main entrance to the Union passenger station on Canal street in the city of Chicago. That he and one other cabman stand inside of the entrance of the Union passenger station and at the said entrance at the place designated by the complainant where the solicitors for the Parmalee transfer companies agents stand and solicit passengers who are not provided with through tickets for the carriages of said company, and that at the said place in the said station this defendant and said other cabmen solicit for their cabs and other cabmen solicit for their cabs and other cabmen's cabs who occupy the public hack stand with their cabs, and that their manner of solicitation for said cabs is in the same manner that the Parmalee transfer agents solicit passen-
165 gers for the carriages of the said company by simply announcing to persons going in and coming out of the said entrance "Cab" and "Carriage." And that at no time are there more than three cabmen within the Union Passenger station soliciting passengers on incoming trains for their cabs except the persons in the employment of the Parmalee company aforesaid. And that there are in said station at said main entrance two other solicitors who are soliciting passengers who arrive at and depart from the said station to ride in the carriages of the Parmalee company. And that there are not more than four persons at any time within said station in the main entrance soliciting passengers for conveyance in cab or carriages.

That the said agents of the said Parmalee company have a collector standing in the main entrance of the said station collecting

tickets from what are called "through passengers" and selling tickets to passengers who desire conveyance in carriages. And that the said ticket collector collects and sells tickets at the said place.

That the said Parmalee transfer company have from three to six busses standing all day upon Canal street in front of the said main entrance to the said station to receive passengers on incoming trains from which part of the street all cabmen of the city of Chicago are excluded from standing their cabs or vehicles, they being compelled under the public regulations of the city to keep their cabs and horses at a distance of about four hundred feet north of the main entrance of the said station. That when the two cabmen who go into the depot, soliciting passengers for their cabs and others cabs standing upon the said public hack stand, waiting for employment, the passenger is taken out upon the street where two other hackmen are standing who notify the cabmen upon the said public
166 hack stand that they desire a cab and then the cab or cabmen desired to take the passengers who have been procured drive down to the sidewalk a short distance from the main entrance and receive passenger or passengers and convey them to where they wish to go, and that the cabmen within the station who delivers the passengers he has procured to the cabman upon the sidewalk returns to within the said station and takes his position there where the agents of the Parmalee company stand and solicit passengers for its carriages and continue his business as a cabman.

Affiant further says that he does not and the other cabmen within the station does not solicit what is called "through passengers" who have tickets for continuous rides through the city of Chicago, which they have procured from railroad companies or the Parmalee transfer company upon the train coming into the city of Chicago. And that when they meet a passenger who has a through ticket they direct him to the Parmalee company or its agents who are in charge of this class of passengers as they are not engaged in carrying passengers with through tickets or passengers who have procured tickets of the Parmalee transfer company upon the trains.

And that this affiant and the other cabmen with him within said station at said main entrance instead of obstructing ingress and egress to and from the main entrance of the said station aid and assist incoming passengers on interstate, local and suburban trains from said station and relieved the crowded condition that occurs there sometime by directing those who have through tickets or tickets for conveyance upon the Parmalee transfer company's busses and to its agents, and providing others with cabs to convey

them to where they may desire to go who are not provided with tickets or conveyances.

167 Affiant further says that he and the other cabmen within the station do not molest, impose upon or in any way wrongfully interfere with any persons or passengers who arrive at or depart from the said station on incoming trains or outgoing trains. And that during the day there are stationed at the said station entrance and that portion of the said station three city policemen of the city of Chicago to see that all persons who arrive at and depart from said station on passenger trains are not wrongfully interfered with by cabmen and expressmen or other persons.

Affiant further says that he and the other cabmen who stands within said station aforesaid soliciting passengers for their cabs and other cab and expressmen do not use vulgar or profane language or chew tobacco and expectorate upon the floor of said station, or grab the baggage of the passengers who arrive upon trains at said station, or touch their baggage unless the said passengers desire that they take his baggage. And that this affiant is above the main entrance of the main station all day and that he sees all that takes place there, and that the cabmen who are defendants in the said suit at all times and under all circumstances treat all persons who arrive at and depart from the said station with courtesy and with respect, and that all the said cabmen at all times in the discharge of their duties as cabmen deport themselves in a peaceable, quiet and gentlemanly manner and that they do not in any way injure the property of the complainant or damage or injure in any way the business of the Pennsylvania company, complainant herein. Nor do defendants, cabmen obstruct the main entrance to and from the said station to the extent that it is obstructed by the Parmalee transfer company, its agents servants and employes. Nor do they obstruct the street directly in front of the said main entrance to and from the said station, and that that portion of the street is used wholly by the said Parmalee trans-

168 fer company in standing its vehicles there and to the exclusion of the cab and expressmen who are made defendants in this suit.

Affiant further says that he and the other cabmen who stand inside the said station, soliciting passengers for their vehicles, wear neat and clean clothing and are respectfully dressed, and wear a gilt braid about their caps with the word "Cab Agt." inscribed upon the caps to notify persons that they are cabmen and that they convey for hire persons desiring conveyances and for the purpose of showing to the public that they are in no way connected with

the Parmalee company or with any one else than for themselves and for the cabmen who occupy said public hack stand.

ALBERT RILEY.

Subscribed and sworn to before me, this seventh day of March, A. D. 1902.

[SEAL] RICHARD E. DOOLEY,
Notary Public.

(Endorsed) Filed March 8, 1902. S. W. Burnham, Clerk.

169 State of Illinois } ss.
County of Cook }

Robert S. Taylor, being duly sworn on his oath, says that he is of lawful age and a licensed cabman of the City of Chicago and has been for more than one year last past a cabman in the City of Chicago and stands and has his horse and cab waiting for employment upon the Public Hack stand No. 4 on the East side of Canal Street about four hundred (400) feet north of the main entrance to the Union Passenger Station on Canal Street in the City of Chicago, and that affiant and one other cabman stands outside of the main entrance of the said Union Passenger Station upon the sidewalk adjacent to said station and where some of the solicitors and employees of the Parmalee Transfer Company, referred to in the Bill of Complaint aforesaid, stand and solicit passengers for the carriages and busses of said Company, and that at said place upon said sidewalk in front of said entrance, this affiant and said other cabman with him stand for the purpose of meeting and receiving such passengers as are brought to affiant and his said co-cabman by other cabmen from within said entrance to said Station and which passengers desire cab accommodations, and that upon announcement being made to affiant and his said co-cabman that such passengers do desire such accommodations, affiant and said co-cabman signal or notify and call some of the cabman standing upon said Hack Stand for one or more cabs, as the case may be, to come forward and receive the said passenger or passengers.

And that thereupon the custom and practice is for such cabman to come forward with the cab, receive and convey away such passenger or passengers, and that in so coming forward, drive down to the sidewalk a short distance from the said main entrance and there receive the said passenger or passengers as aforesaid.

ylor Affiant further says that two cabmen, who have hacks or
170 cabs standing upon said Public Hack Stand, stand inside of the entrance of the said Union Passenger Station at said main entrance at the place designated by the complainant where the said solicitors for said Parmalee Transfer Company stand and solicit passengers who are not provided with through tickets for the carriages of said company and that at said place within said station, said two cabmen solicit for their cabs and other cabmen's cabs who occupy said Hack Stand; and that their manner of solicitation for said cabs is in the same manner that the said Parmalee Transfer Company's agents solicit passengers for the carriages and busses of said company, by simply announcing to persons going in and coming out of said entrance "a cab" and "carriage", and that at no time are there more than two cabmen within the said entrance so soliciting passengers on incoming trains for their cabs, except the persons in the employment of the Parmalee Company, aforesaid.

And that there are at said Station within said main entrance two other solicitors who are soliciting passengers who arrive at and depart from said Station to ride in the carriages of the said Parmalee Company; and that there are not more than four persons at any time within said Station in the main entrance soliciting passengers for conveyance in cabs and carriages.

Affiant further says that the agents of the Parmalee Company have a collector standing in the main entrance collecting tickets from what are called, "through passengers" and selling tickets to passengers who desire conveyance in carriages, and that said ticket collector collects and sell tickets at the said place; that that said Parmalee Transfer Company have from three to six buses standing all day upon Canal Street in front of the said main entrance of said Station to receive passengers on incoming trains, from which part of the street all cabmen of the City of Chicago are excluded from standing their cabs or vehicles, they being compelled under the Police regulations of the City, to to keep their cabs and horses at a distance of about four hundred (400) feet north of said main entrance.

And affiant further says that he and said other cabmen who
171 stand with him on said sidewalk and the said cabmen who go within the entrance of said Station do not solicit what are called "through passengers" who have tickets for a continuous ride through the City of Chicago, that they have procured through railroad companies or the Parmalee Transfer Company upon the train coming to the City of Chicago, and that when they, said cabmen meet a passengers who has a through ticket, they direct them to the said Parmelee Company or its agents who are in charge of that class of passengers

with through tickets or passengers who have so procured tickets of the Parmalee Transfer Company upon the trains.

And that this affiant and said other cabmen with him and said cabmen who go within said Station as aforesaid, instead of obstructing ingress and egress to and from the main entrance of said Station and assist incoming passengers on interstate, Local and suburban trains from said Station and relieve the crowded condition that occurs at and near said main entrance sometimes, by directing those who have through tickets or tickets for conveyance over said Parmalee Transfer Company's line to the agents of said Transfer Company and by providing others with cabs to convey them to where they may desire to go and who are not provided with tickets or conveyances.

Affiant further says that he and said other cabmen with him as well as said cabmen within the said entrance, do not molest, impose upon or in any way wrongfully interfere with any person or passengers who arrive at or depart from the said station on incoming or outgoing trains; and that during the day there are stationed at the said station entrance three City police men of the City of Chicago to see that all persons who arrive at and depart from said station on passenger trains are not wrongfully interfered with by cabmen or expressmen or other persons; and that said cabmen who stand so upon said sidewalk at said entrance, solicit and care for passengers as affiant has above set forth; do not use vulgar or profane language or chew tobacco and expectorate upon the floor of said Station, or upon the sidewalk in front of said entrance, or grab
172 the baggage of said passengers who arrive at such Station or touch their baggage unless the said passengers desire that said cabmen take their baggage, and that this affiant is about the main entrance of said Station all day, and that he sees all that takes place there and that the cabmen who are defendants in the said suit at all times and under all circumstances treat all persons who arrive at and depart from said Station with courtesy and respect, and that all the said cabmen at all times in the discharge of their duties as cabmen, deport themselves in a peaceful, quiet and gentlemanly manner, and that they do not in any way injure the property of the complainant or damage or injure in any way the business of the Pennsylvania Company, complainants aforesaid, nor do said defendant obstruct the main entrance to and from the said station to the extent that it is obstructed by the Parmalee Transfer Company, its agents, servants and employees, nor do said cabmen obstruct the street directly in front of the main entrance to and from said station and that that said portion of the street last aforesaid is used wholly by the said Parmalee Transfer Company in standing its

vehicles and to the exclusion of the cab and expressmen, who are defendants in said suit.

Affiant further says that he and the other cabmen who stand on the said sidewalk in front of said main entrance and within said main entrance of said station soliciting and caring for passengers as aforesaid for their vehicles, wear neat and clean clothing and are respectfully dressed, and wear a gilt braid about their caps with the words "cab Agt." inscribed, said caps to notify persons that they are cabmen and that they convey for hire, persons desiring conveyance and for the purpose of showing to the Public that they are in no way connected with the Parmalee Transfer Company, or with any other person and for themselves and the cabmen who occupy said Public Hack Stand.

ROBERT L. TAYLOR.

Subscribed and sworn to before me this 8th day of March A. D. 1902.

JACOB C. LEBOSKY,
Notary Public.

[SEAL]

(Endorsed) Filed Mar. 8th, 1902. S. W. Burnham, Clerk.

173 NORTHERN DIVISION,

Thursday, February 27, 1902.

Present:

Hon. Christian C. Kohlsaat, District Judge.

Pennsylvania Company,
vs.
Harry Donovan, George Callahan, Charles Lewis, M. M. Lee, Joseph Ward, W. H. Ashley, R. S. Taylor, I. Gauthier, I. Vaughn, Sanford McGill, George Baude, J. Baude, Albert Reily, James Casey, Thomas Casey, Edward Devaney, W. Owens, John Kerr, A. Johnson, Tom Quinlan, John Tievens, M. Brady, George Quinlan, George Gustin, John O. Toole, Nicholas Stokes, C. Connell, James Sullivan, Patrick Quinlan, C. Cunningham, J. Vaughn, Peter Taylor, William Simmons, Patrick Regan, James Regan, John J. Casey, M. Crawley, M. Geary, A. Cook, Charles P. Engel, Eugene Gibbs and John Casey. } 26191

State of Illinois, Cook County. } ss.

174 Wm. Gaynor, being first duly sworn, deposes and says: that he is of lawful age and resides at No. 147 South Canal in the City of Chicago and is engaged in the Hotel, Restaurant and saloon business at No. 147 S. Canal, on the west side of Canal Street in the City of Chicago, directly opposite the Union Passenger Station, which is located on the east side of said street directly opposite his place of business. That he has been engaged in business at this place for more than five years last past; that he is well acquainted with the said defendants in the above entitled cause by sight and knows many of them by their names and that all of the defendants are cab drivers or express men and stand with their cabs and express wagons along the east side of South Canal Street in front of the Union Passenger Station, and wait for employment upon the east side of South Canal Street in front of the Union Passenger Station upon street and sidewalk between Madison and Adams Streets. That the Public Hack Stand is about four hundred (400) feet north

of the main entrance to the Union Passenger Station where the cabs and horses stand, and that in going in and out of his place of business many times in the day, sees the cab and expressmen aforesaid upon the street and sidewalk upon South Canal Street soliciting passengers and baggage for their vehicles.

Affiant further says that during this time, he sees many passengers who arrive upon the incoming trains who are solicited by defendants to ride in the defendants' vehicles or carry their baggage, and that during all the time aforesaid, he has seen none of the defendants in any way interfere with passengers who arrive on the incoming trains, nor has he seen any of them in any way interfere with passengers who go into the Union Passenger Station to take outgoing trains. And from what he has seen and observed of the defendants in this case in carrying on their business as cab and expressmen of the City of Chicago, upon the east side of South
175 Canal Street and on sidewalk in front of the said Union Passenger Station said defendants do not prevent ingress or egress to or from said Passenger Station at any of the entrances to or from the said Passenger Station. And that he has not heard them use loud or boisterous, vulgar or profane language, or lay hold of passengers in their attempts to solicit their patronage, or annoy, harass or impose any passengers arriving at the said Union Passenger Station on through trains, local or suburban trains. Nor has he seen at any time from eight to twenty of these defendants on the sidewalk in front of the main entrance to the said Union Passenger Station at any one time plying their vocation there. Nor has he seen them at any time obstruct the sidewalk or entrance to and from the said Passenger Station or prevent ingress or egress of passengers in coming out of the said entrances or going into the depot through the said entrances or in any way obstruct any of the entrances or prevent persons from passing in and out through the said entrance.

Affiant further says that so far as he has been able to observe, and he has been in a position to observe, the streets and sidewalks have not been obstructed so as to prevent persons from passing in and out of the entrances to the said Union Passenger Station and in and upon the sidewalk and street in front of the Union Passenger Station on said South Canal Street. Nor have vehicles upon the street or pedestrians upon the sidewalk been interfered with or prevented from freely traveling upon the said street and sidewalk on the east side of said South Canal Street. Nor has he seen the defendants push or shove each other about upon the sidewalk in front of the Union Passenger Station, or making demonstrations or placing themselves in attitudes as if going to fight, or heard them using loud,

boisterous or profane language to each other or to any person or persons traveling upon the said street or sidewalk in front of the Union Passenger Station aforesaid. But so far as he has been
176 able to observe, the said defendants have carried on and are carrying on their vocation in a peaceable, quiet and gentlemanly manner. And so far as he has been able to observe, they are in no way improperly impose upon or interfering with passengers arriving on incoming trains at the said Passenger Station or with the passengers going to the said Passenger Station or with the passengers going to the said Passenger Station to take outgoing trains, or in any way injuring or interfering with the property of the Pennsylvania Company. And from his observation no injury is being done to the property or persons arriving on incoming trains or going to the Station to take outgoing trains. And that no injury results to his business or his property in any way that he can observe by virtue of the defendants using South Canal Street and the sidewalks in front of his place of business and in front of the Union Passenger Station place of business, and that no injury or damages so far as he can see and observe, is being done to the business of Complainant or Union Passenger Station or property of any persons by the defendants in carrying on their business as cabmen and expressmen between Madison and Adams Streets on South Canal Street in the City of Chicago.

And that the defendants in plying their vocation along on the east side of South Canal Street and sidewalk between Madison and Adams Streets in front of said Union Passenger Station do not create a nuisance and that there has been at all times and now plenty of room for travel upon the sidewalk to and from said Station and plenty of room upon the streets for all vehicles to approach without interference the entrance to the Union Passenger Station.

Further that there are at all times of the day and night from one to three City Policemen of the City of Chicago stationed in and about said Union Passenger Station to see that the laws and ordinances are enforced and obeyed, that relate to cab and expressmen, and that peace, quiet and order are maintained and to prevent any and all persons from wrongfully interfering with all persons arriving on interstate, local and suburban passenger trains at the Union Passenger Station and from wrongfully interfering with all persons taking outgoing interstate, local and suburban passenger trains. That he has never heard any complaints made by any persons who have arrived at or taken passage at said Union Passenger Station when interstate, local or suburban Passenger trains against any of the defendants in the discharge of their duties as cab, or expressmen, or any complaint against them

implying their vocation along said South Canal Street and sidewalk in front of said Union Passenger Station.

That these defendants in soliciting business aforesaid, and in conveying their passengers and baggage to and from said Station, conduct themselves in a gentlemanly and decent manner and in the same manner and way at said Station as the agents, drivers and employees of the Parmalee Transfer Company conduct themselves in soliciting business for its carriages in said Station and in the entrance way of said Station and upon the sidewalk in front of said Station.

WM. GAYNOR,

Subscribed and sworn to before me, this 7th day of March, A. D. 1902.

RICHARD E. DOOLEY,
[SEAL] *Notary Public,*

177 State of Illinois, } ss.
Cook County }

S. Finkelsteine, being first duly sworn, deposes and says: that he is of lawful age and resides at No. 29 Lowell Place in the city of Chicago and is engaged in the saloon and restaurant business at No. 153 & 155 S. Canal street on the west side of Canal street in the City of Chicago, directly opposite the Union Passenger Station, which is located on the west side of said street directly opposite his place of business. That he has been engaged in business at this place for more than five years last past; that he is well acquainted with the said defendants in the above entitled cause by sight and knows many of them by their names and that all of the defendants are cab drivers or expressmen and stand with their cabs and express wagons along on the east side of South Canal street in front of the Union Passenger Station, and wait for employment upon the east side of South Canal Street in front of the Union Passenger Station upon street and sidewalk between Madison and Adams streets. That the Public Hack Stand is about four hundred (400) feet north of the main entrance to the Union Passenger Station where the cabs and horses stand, and that in going in and out of his place of business many times in the day, sees the cab and expressmen aforesaid upon the street and sidewalk upon South Canal street soliciting passengers and baggage for their vehicles.

Affiant further says that during this time, he sees many passengers

who arrive upon the incoming trains who are solicited by defendants to ride in the defendants' vehicles or carry their baggage, and that during all the time aforesaid, he has seen none of the defendants in any way interfere with passengers who arrive on the incoming trains, nor has he seen any of them in any way inter-
178 fere with passengers who go into the Union Passenger Station to take outgoing trains. And from what he has seen and observed of the defendants in this case in carrying on their business as cab and expressmen of the city of Chicago, upon the east side of South Canal street and on sidewalk in front of the said Union Passenger Station said defendants do not prevent ingress or egress to or from the said passenger station at any of the entrances to or from the said passenger station. And that he has not heard them use loud or boisterous, vulgar or profane language, or lay hold of passengers in their attempts to solicit their patronage, or annoy harass or impose any passengers arriving at the said Union Passenger Station or through trains, local or suburban trains, Nor has he seen at any time from eight to twenty of these defendants on the sidewalk in front of the main entrance to the said Union Passenger Station at any one time plying their vocation there. Nor has he seen them at any time obstruct the sidewalk or entrance to and from the said Passenger Station or prevent ingress or egress of passengers in coming out of the said entrances or going into the depot through the said entrances or in any way obstruct any of the entrances or prevent persons from passing in and out through the said entrance.

Affiant further says that so far as he has been able to observe and he has been in a position to observe, the streets and sidewalks have not been obstructed so as to prevent persons from passing in and out of the entrances to the said Union Passenger Station and in and upon the sidewalk and street in front of the Union Passenger Station on said South Canal Street. Nor have vehicles upon the street or pedestrians up on the sidewalk been interfered with or prevented from freely traveling upon the said street and sidewalk on the east side of said South Canal Street. Nor
179 has he seen the defendants push or shove each other about upon the sidewalk in front of the Union Passenger Station, or making demonstrations or placing themselves in attitudes as if going to fight or heard them using loud, boisterous or profane language to each other or to any person or persons traveling upon the said streets or sidewalk in front of the Union Passenger Station aforesaid. But so far as he has been able to observe the said defendants have carried on and are carrying on their vocation in a peaceable, quiet and gentlemanly manner. And so far as he has

been able to observe, they are in no way improperly impose— upon or interfering with passengers arriving on incoming trains at the said Passenger Station or with the passengers going to the said Passenger Station to take outgoing trains, or in any way injuring or interfering with the property of the Pennsylvania Company. And from his observation no injury is being done to the property or persons arriving on incoming trains or going to the station to take outgoing trains. And that no injury results to his business or his property in any way that he can observe by virtue of the defendants using South Canal Street and the sidewalks in front of his place of business and in front of the Union Passenger Station place of business, and that no injury or damages so far as he can see and observe, is being done to the business of complainant or Union Passenger Station or property of any persons by the defendants in carrying on their business as cabmen and expressmen between Madison and Adams streets on South Canal street in the city of Chicago.

And that the defendants in plying their vocation along on the the east side of South Canal street and sidewalk between Madison and Adams streets in front of said Union Passenger Station do not create a nuisance and that there has been at all times and now plenty of room for travel upon the sidewalk to and from said
180 Station and plenty of room upon the streets for all vehicles to approach without interference the entrance to the Union Passenger Station.

Further that there are at all times of the day and night from one to three city policemen of the city of Chicago stationed in and about said Union Passenger Station to see that the laws and ordinances are enforced and obeyed, that relate to Cab and expressmen, and that peace, quiet and order are maintained and to prevent any and all persons from wrongfully interfering with all persons arriving on interstate, local and suburban passenger trains at the Union Passenger Station and from wrongfully interfering with all persons taking outgoing interstate, local and suburban passenger trains. That he has never heard any complaints made by any persons who have arrived at or taken passage at said Union Passenger Station when interstate, local or suburban Passenger trains against any of the defendants in the discharge of their duties as cab, or expressmen, or any complaint against them in plying their vocation along said South Canal street and sidewalk in front of said Union Passenger Station.

That these defendants in soliciting business aforesaid, and in conveying their passengers and baggage to and from said Station conduct themselves in a gentlemanly and decent manner and in the

same manner and way at said station at she agents, drivers and employees of the Parmalee Transfer Company conduct themselves in soliciting business for its carriages in said Station and in the entrance way of said Station and upon the sidewalk in front of said Station.

S. FINKELSTEINE.

Subscribed and sworn to before me, this 8th day of March, A. D. 1902.

RICHARD E. DOOLEY,
[SEAL] *Notary Public.*

(Endorsed) Filed Mar. 8, 1902, S. W. Burnham, Clerk.

181 CIRCUIT COURT OF THE UNITED STATES,
Northern District of Illinois,
Northern Division,
Thursday, February 27, 1902,

Present: Hon. Christian C. Kohlsaat, District Judge.

Pennsylvania Company,
vs.
Harry Donovan, George Callahan, Charles Lewis, M. M. Lee, Joseph Ward, W. H. Ashley, R. S. Taylor, I. Gauthier, I. Vaughn, Sanford McGill, George Baude, Albert Reily, James Casey, Thomas Casey, Edward Devaney, W. Owens, John Kerr, A. Johnson, Tom Quinlan, John Tievens, M. Brady, George Quinlan, George Gustin, John O. Toole, Nicholes Stokes, C. Connell, James Sullivan, Patrick Quinlan, C. Cunningham, J. Vaughn, Peter Taylor, William Simmons, Patrick Regan, James Regan, John J. Casey, M. Crawley, M. Gear, A. Cook, Charles P. Engel, Eugene Gibbs, and John Casey. } 26191

182 State of Illinois, } ss.
Cook County. }

Louis Elman, being first duly sworn, deposes and says; that he is of lawful age and resides at No. 123 S. Canal Street, in the city of

Chicago, and is engaged in the cigar business at No. 112 S. Canal street, on the west side of Canal street in the City of Chicago, directly opposite the Union Passenger Station which is located on the east side of said street directly opposite his place of business. That he has been engaged in business at this place for more than five years last past; that he is well acquainted with the defendants in above entitled cause by sight and knows many of them by their names and that all of the defendants are cab drivers or expressmen and stand with their cabs and express wagons along on the east side of South Canal street in front of the Union Passenger Station, and wait for employment upon the east side of South Canal street in front of the Union Passenger Station upon street and sidewalk between Madison and Adams streets. That the Public Hack Stand is about four hundred (400) feet north of the main entrance to the Union Passenger Station where the cabs and horses stand, and that in going in and out of his place of business many times in the day, sees the cab and expressmen aforesaid upon the street and sidewalk upon South Canal street soliciting passengers and baggage for their vehicles.

Affiant further says that during this time, he sees many passengers who arrive upon the incoming trains who are solicited by defendants to ride in the defendants' vehicles, or carry their baggage and that during all the time aforesaid he has seen none of the defendants in any way interfere with passengers who arrive on
183 the incoming trains, nor has he ever seen any of them in any way interfere with passengers who go into the Union Passenger Station to take outgoing trains. And from what he has seen and observed of the defendants in this case in carrying on their business as cab and expressmen of the City of Chicago, upon the east side of South Canal street and on the sidewalk in front of the said Union Passenger Station and defendants do not prevent ingress and egress to or from the said Passenger Station at any of the entrances to or from the said Passenger Station. And has not heard them use loud or boisterous, vulgar or profane language, or lay hold of passengers in their attempts to solicit their patronage, or annoy, harass or impose any passengers arriving at the said Union Passenger Station on through trains, local or suburban trains. Nor has he seen at any time from eight to twenty of these defendants on the sidewalks in front of the main entrance to the said Union Passenger Station at any time plying their vocation there. Nor has he seen them at any time obstruct the sidewalk or entrance to and from the said Passenger Station or prevent ingress or egress of passengers in coming out of the said entrances or going into the depot through the said entrances or in any way obstruct any of the

entrances or prevent persons from passing in and out through the said entrances.

Affiant further says that so far as he has been able to observe, and he has been in a position to observe, the streets and sidewalk have not been obstructed so as to prevent persons from passing in and out of the entrances to the said Union Passenger Station and in and upon the sidewalk and street in front of the Union Passenger Station on said South Canal Street. Nor have vehicles upon
184 the street or pedestrians upon the sidewalk been interfered with or prevented from freely traveling upon the said street and sidewalk on the east side of said South Canal street. Nor has he seen the defendants push or shove each other about upon the sidewalk in front of the Union Passenger Station, or making demonstrations or placing themselves in attitudes as if going to fight, or heard them using loud, boisterous or profane language to each other or to any person or persons traveling upon the said street or sidewalk in front of the Union Passenger Station, aforesaid. But so far as he has been able to observe, the said defendants have carried on and are carrying on their vocation in a peaceable, quiet and gentlemanly manner. And so far as he has been able to observe, they are in no way improperly impose upon or interfering with passengers arriving on incoming trains at the said Passenger Station or with the passengers going to the said Passenger Station to take outgoing trains, or in any way injuring or interfering with the property of the Pennsylvania Company. And from his observation, no injury is being done to the property or persons arriving on incoming trains or going to the station to take outgoing trains. And that no injury results to his business or his property in any way that he can observe by virtue of the defendants using South Canal street and the sidewalks in front of his place of business and in front of the Union Passenger Station place of business, and that no injury or damage so far as he can see and observe, is being done to the business of complainant or Union Passenger Station or property of any persons by the defendants in carrying on their business as cabmen and expressmen between Madison and Adams streets on South Canal street in the city of Chicago.

185 And that the defendants in plying their vocation along on the east side of South Canal street and sidewalk between Madison and Adams streets in front of said Union Passenger Station do not create a nuisance and that there has been at all times and now plenty of room for travel upon the sidewalk to and from said Station and plenty of room upon the streets for all vehicles to approach without interference the entrances to the Union Passenger Station.

Further that there are at all times of the day and night from one to three city policemen of the city of Chicago stationed in and about said Union Passenger Station to see that the laws and ordinances are enforced and obeyed, that relate to cab and expressmen, and that peace, quiet and order are maintained and to prevent any and all persons from wrongfully interfering with all persons arriving on interstate, local or suburban passenger trains at the Union Passenger Station, and from wrongfully interfering with all persons taking outgoing and interstate, local or suburban passenger trains. That he has never heard any complaints made by any persons who have arrived at or taken passage at said Union Passenger Station when interstate, local or suburban passenger trains against any of the defendants in the discharge of their duties as cab, or expressmen, or any complaint against them implying their vocation along said South Canal street and sidewalk in front of said Union Passenger Station.

That these defendants in soliciting business aforesaid, and in conveying their passengers and baggage to and from said station conduct themselves in a gentlemanly and decent manner and in the same manner and way at said station as the agents, drivers and employees of the Parmalee Transfer Company conduct themselves in soliciting business for its carriages in said station and in the entrance way of said station and upon the sidewalk in front of said station.

186

LOUIS ELMAN.

Subscribed and sworn to before me, this 7th day of March, A. D. 1902.

RICHARD E. DOOLEY,
Notary Public.

[SEAL]

187 State of Illinois, } ss.
Cook County. }

H. W. Fall, being first duly sworn, depose and says; that he is of lawful age and resides at No. 317 S. Canal in the city of Chicago, and is engaged in the saloon hotel and restaurant business at No. 137 S. Canal street, on the west side of Canal street in the City of Chicago, directly opposite the Union Passenger Station, which is located on the east side of said street directly opposite his place of business. That he has been engaged in business at this place for more than five years last past; that he is well acquainted with the said defendants in above entitled cause by sight and knows many of them by their names and that all of the defendants are cab drivers or expressmen and stand with their cabs and express wagons

along on the east side of South Canal street in front of the Union Passenger Station, and wait for employment upon the east side of South Canal street in front of the Union Passenger Station upon street and sidewalk between Madison and Adams streets. That the public hack stand is about four hundred (400) feet north of the main entrance to the Union Passenger Station where the cabs and horses stand, and that in going in and out of his place of his business many *times in the day, sees the cab and expressmen aforesaid* upon the street and sidewalk upon South Canal street soliciting passengers and baggage for their vehicles.

Affiant further says that during this time, he sees many passengers who arrive upon the incoming trains who are solicited by defend-
ants to ride in the defendants' vehicles or carry their baggage
188 and that during all the times aforesaid he has seen none of
the defendants in any way interfere with passengers who arrive on the incoming trains, nor has he seen any of them in any way interfere with passengers who go into the Union Passenger Station to take outgoing trains. And from what he has seen and observed of the defendants in this case in carrying on their business as cab and expressmen of the city of Chicago, upon the east side of South Canal street and on sidewalk in front of the said Union Passenger Station said defendants do not prevent ingress or egress to or from the said Passenger Station at any of the entrances to or from the said Passenger Station. And has not heard them use loud or boisterous, vulgar or profane language, or lay hold of passengers in their attempts to solicit their patronage, or annoy, harass or impose any passengers arriving at the said Union Passenger Station on through trains, local or suburban trains. Nor has he seen at any time from eight to twenty of these defendants on the sidewalk in front of the main entrance to the said Union Passenger Station at any one time plying their vocation there.

Nor has he seen them at any time obstruct the sidewalk or entrance to and from the said Passenger Station or prevent ingress or egress of passengers in coming out of the said entrances or going into the depot through the said entrances or in any way obstruct any of the entrances or prevent persons from passing in and out through the said entrances

Affiant further says that so far as he has been able to observe, and he has been in a position to observe, the streets and sidewalks have not been obstructed so as to prevent persons from passing in and out of the entrances to the said Union Passenger Station and in and upon the sidewalk and street in front of the Union
Passenger Station on said South Canal street. Nor have vehicles
189 upon the street or pedestrians upon the sidewalk been interfered with or prevented from freely traveling upon the said

street and sidewalk on the east side of said South Canal street. Nor has he seen the defendants push or shove each other about upon the sidewalk in front of the Union Passenger Station, or making demonstrations or placing themselves in attitudes as if going to fight, or heard them using loud, boisterous or profane language to each other or to any person or persons traveling upon the said street or sidewalk in front of the Union Passenger Station aforesaid. But so far as he has been able to observe, the said defendants have carried on and are carrying on their vocation in a peaceable, quiet and gentlemanly manner. And so far as he has been able to observe, they are in no way improperly impose upon or interfering with passengers arriving on incoming trains at the said Passenger Station or with the passengers going to the said Passenger Station to take outgoing trains, or in any way injuring or interfering with the property of the Pennsylvania Company. And from his observation no injury is being done to the property or persons arriving on incoming trains or going to the station to take outgoing trains. And that no injury results to his business or his property in any way that he can observe by virtue of the defendants using South Canal street and the sidewalks in front of his place of business and in front of the Union Passenger Station place of business, and that no injury or damages so far as he can see and observe, is being done to the pusiness of complainant or Union Passenger Station or property of any persons by the defendants in carrying on their business as cabmen and expressmen between Madison and Adams streets on South Canal street in the city of Chicago.

And that the defendants in plying their vocation along on the east side of South Canal street and sidewalk between Madison
190 and Adams streets in front of said Union Passenger Station do not create a nuisance and that there has been at all times and now plenty of room for travel upon the sidewalk to and from said Station and plenty of room upon the streets for all vehicles to approach without interference the entrances to the Union Passenger Station.

Further that there are at all times of the day and night from one to three city policemen of the city of Chicago stationed in and about said Union Passenger Station to see that the laws and ordinances are enforced and obeyed, that relate to cab and expressmen, and that peace, quiet and order are maintained and to prevent any and all persons from wrongfully interfering with all persons arriving on interstate, local or suburban passenger trains at the Union Passenger Station and from wrongfully interfering with all persons taking outgoing interstate, local and suburban passenger trains. That he has never heard any complaints made by any

persons who have arrived at or taken passage at said Union Passenger Station when interstate, local or suburban trains against any of the defendants in the discharge of their duties as cab, or expressmen, or any complaint against them in plying their vocation along said South Canal street and sidewalk in front of said Union Passenger Station.

That these defendants in soliciting business aforesaid, and in conveying their passengers and baggage to and from said Station, conduct themselves in a gentlemanly and decent manner and in the same manner and way at said station as the agents, drivers and employees of the Parmalee Transfer Company conduct themselves in soliciting business for its carriages in said station and in the entrance way of said station and upon the sidewalk in front of said station.

H. W. FALL.

Subscribed and sworn to before me, this 7th day of March, A. D. 1902.

RICHARD E. DOOLEY,
Notary Public.

[SEAL]

191 State of Illinois, } ss.
Cook County, }

Adolph W. Levin, being first duly sworn, depose and says: that he is of lawful age and resides at No. 131 S. Canal street in the City of Chicago, and is engaged in the saloon and restaurant business at No. 133 S. Canal street, on the west side of Canal street in the City of Chicago, directly opposite the Union Passenger station, which is located on the east side of said street directly opposite his place of business. That he has been engaged in business at this place for more than five years last past; that he is well acquainted with the said defendants in above entitled cause by sight and knows many of them by their names and that all of the defendants are cab drivers or expressmen and stand with their cabs and express wagons along on the east side of South Canal street in front of the Union Passenger Station, and wait for employment upon the east side of South Canal street in front of the Union Passenger Station upon street and sidewalk between Madison and Van Buren streets. That the public hack stand is about four hundred (400) feet north of the main entrance to the Union Passenger Station where the cabs and horses stand, and that in going in and out of his place of business many times in the day, sees the cab and express-

men aforesaid upon the street and sidewalk upon south Canal street soliciting passengers and baggage for their vehicles.

Affiant further says that during this time, he sees many passengers who arrive upon the incoming trains who are solicited by defendants to ride in the defendants' vehicles or carry their
192 baggage, and that during all the time aforesaid he has seen none of the defendants in any way interfere with passengers who arrived on the incoming trains, nor has he seen any of them in any way interfere with passengers who go into the Union Passenger Station to take outgoing trains. And from what he has seen and observed of the defendants in this case in carrying on their business as cab and expressmen of the city of Chicago, upon the east side of South Canal street and on sidewalk in front of the said Union Passenger Station said defendants do not prevent ingress or egress to or from the said Passenger Station at any of the entrances to or from the said Passenger Station. And has not heard them use loud or boisterous, vulgar or profane language, or lay hold of passengers in their attempts to solicit their patronage, or annoy harass or impose any passengers arriving at the said Union Passenger Station on through trains, local or suburban trains, Nor has he seen at any time from eight to twenty of these defendants on the sidewalk in front of the main entrance to the said Union Passenger Station at any one time plying their vocation there.

Nor has he seen them at any time obstruct the sidewalk or entrance to and from the said Passenger station or prevent ingress or egress of passengers in coming out of the said entrances or going into the depot through the said entrances or in any way obstruct any of the entrances or prevent persons from passing in and out through the said entrances.

Affiant further says that so far as he has been able to observe, and he has been in a position to observe, the streets and sidewalks have not been obstructed so as to prevent persons from passing in and out of the entrances to the said Union Passenger Station and in and upon the sidewalk and street in front of the Union Passenger Station on said South Canal street. Nor have vehicles upon
193 the street or pedestrians upon the sidewalk been interfered with or prevented from freely traveling upon the said street and sidewalk on the east side of said South Canal street. Nor has he seen the defendants push or shove each other about upon the sidewalk in front of the Union Passenger Station, or making demonstrations or placing themselves in attitudes as if going to fight or hear them using loud, boisterous or profane language to each other or to any person or persons traveling upon the said street or sidewalk in front of the Union Passenger Station aforesaid. But

so far as he has been able to observe, the said defendants have carried on and are carrying on their vocation in a peaceable, quiet and gentlemanly manner. And so far as he has been able to observe, they are in no way improperly impose upon or interfering with passengers arriving on incoming trains at the said Passenger Station or with the passengers going to the said Passenger Station to take outgoing trains, or in any way injuring or interfering with the property of the Pennsylvania Company. And from his observation no injury is being done to the property or persons arriving on incoming trains or going to the station to take outgoing trains. And that no injury results to his business or his property in any way that he can observe by virtue of the defendants using south Canal street and the sidewalks in front of his place of business and in front of the Union Passenger Station place of business, and that no injury or damages so far as he can see and observe, is being done to the business of complainant or Union Passenger Station or property of any persons by the defendants in carrying on their business as cabmen and expressmen between Madison and Adams streets on South Canal street in the city of Chicago.

And that the defendants in plying their vocations along on the east side of south Canal street and sidewalk between Madison
194 and Van Buren streets in front of said Union Passenger Station do not create a nuisance and that there has been at all times and now plenty of room for travel upon the sidewalk to and from said Station and plenty of room upon the streets for all vehicles to approach without interference the entrances to the Union Passenger Station.

Further that there are at all times of the day and night from one to three city policemen of the city of Chicago stationed in and about said Union Passenger Station to see that the laws and ordinances are enforced and obeyed, that relate to cab and expressmen, and that peace, quiet and order are maintained and to prevent any and all persons from wrongfully interfering with all persons arriving on interstate, local or suburban passenger trains at the Union Passenger station and from wrongfully interfering with all persons taking outgoing interstate, local and suburban passenger trains. That he has never heard any complaints made by any persons who have arrived at or taken passage at said Union Passenger Station when interstate, local or suburban passenger trains against any of the defendants in the discharge of their duties as cab, or expressmen, or any complaint against them in plying their vocation along said south Canal street and sidewalk in front of said Union Passenger Station.

That these defendants in soliciting business aforesaid, and in conveying their passengers and baggage to and from said Station, con-

duct themselves in a gentlemanly and decent manner and in that same manner and way at said station as the agents, drivers and employees of the Parmalee Transfer Company conduct themselves in soliciting business for its carriages in said station and in the entrance way of said station and upon the sidewalk in front of said station.

ADOLPH W. LEVIN

Subscribed and sworn to before me, this 7th day of March, A. D. 1902.

RICHARD E. DOOLEY,
Notary Public.

[SEAL]

195 State of Illinois, } ss.
Cook County. }

Bernard McFane, being first duly sworn, depose and says; that he is of lawful age and resides at No. 133 S. Canal in the city of Chicago, and is engaged in the restaurant and saloon business at No. 127 S. Canal street, on the west side of Canal street in the City of Chicago, directly opposite the Union Passenger Station, which is located on the east side of said street directly opposite his place of business. That he has been engaged in business at this place for more than five years last past; that he is well acquainted with the said defendants in above entitled cause by sight and knows many of them by their names and that all of the defendants are cab drivers or expressmen and stand with their cabs and express wagons along on the east side of South Canal street in front of the Union Passenger Station, and wait for employment upon the east side of South Canal street in front of the Union Passenger Station upon street and sidewalk between Madison and Adams streets. That the public hack stand is about four hundred (400) feet north of the main entrance to the Union Passenger Station where the cabs and horses stand, and that in going in and out of his place of business many times in the day, sees the cab and expressmen aforesaid upon the street and sidewalk upon south Canal street soliciting passengers and baggage for their vehicles.

Affiant further says that during this time, he sees many passengers who arrive upon the incoming trains who are solicited by defendants to ride in the defendants' vehicles or carry their
196 baggage, and that during all the time aforesaid he has seen none of the defendants in any way interfere with passengers who arrived on the incoming trains, nor has he seen any of them in any

way interfere with passengers who go into the Union Passenger Station to take outgoing trains. And from what he has seen and observed of the defendants in this case in carrying on their business as cab and expressmen of the city of Chicago, upon the east side of South Canal street and on sidewalk in front of the said Union Passenger Station said defendants do not prevent ingress or egress to or from the said Passenger Station at any of the entrances to or from the said Passenger Station. And has not heard them use loud or boisterous, vulgar or profane language, or lay hold of passengers in their attempts to solicit their patronage, or annoy harass or impose any passengers arriving at the said Union Passenger Station on through trains, local or suburban trains, Nor has he seen at any time from eight to twenty of these defendants on the sidewalk in front of the main entrance to the said Union Passenger Station at any one time plying their vocation there.

Nor has he seen them at any time obstruct the sidewalk or entrance to and from said Passenger station or prevent ingress or egress of passengers in coming out of the said entrances or going into the depot through the said entrances or in any way obstruct any of the entrances or prevent persons from passing in and out through the said entrances.

Affiant further says that so far as he has been able to observe, and he has been in a position to observe, the streets and sidewalks have not been obstructed so as to prevent persons from passing in and out of the entrances to the said Union Passenger Station and in and upon the sidewalk and street in front of the Union Passenger Station on said South Canal street. Nor have 197 vehicles upon the street or pedestrians upon the sidewalk been interfered with or prevented from freely traveling upon the said street and sidewalk on the east side of said South Canal street. Nor has he seen the defendants push or shove each other about upon the sidewalk in front of the Union Passenger Station, or making demonstrations or placing themselves in attitudes as if going to fight, or heard them using loud, boisterous or profane language to each other or to any person or persons traveling upon the said street or sidewalk in front of the Union Passenger Station aforesaid. But so far as he has been able to observe, the said defendants have carried on and are carrying on their vocation, in a peaceable, quiet and gentlemanly manner. And so far as he has been able to observe, they are in no way improperly impose upon or interfere with passengers arriving on incoming trains at the said Passenger Station or with the passengers going to the said Passenger Station to take outgoing trains, or in any way injuring or interfering with the property of the Pennsylvania

Company. And from his observation no injury is being done to the property or persons arriving on incoming trains or going to the station to take outgoing trains. And that no injury results to his business or his property in any way that he can observe by virtue of the defendants using south Canal street and the sidewalks in front of his place of business and in front of the Union Passenger Station place of business, and that no injury or damages so far as he can see and observe, is being done to the business of complainant or Union Passenger Station or property of any persons by the defendants in carrying on their business as cabmen and expressmen between Madison and Adams streets on South Canal street in the city of Chicago.

And that the defendants in plying their vocation along on the east side of South Canal street and sidewalk between Madison
198 and Adams streets in front of said Union Passenger Station do not create a nuisance and that there has been at all times and now plenty of room for travel upon the sidewalk to and from said Station and plenty of room upon the streets for all vehicles to approach without interference the entrances to the Union Passenger Station.

Further that there are at all times of the day and night from one to three city policemen of the city of Chicago stationed in and about said Union Passenger Station to see that the laws and ordinances are enforced and obeyed, that relate to cab and expressmen, and that peace, quiet and order are maintained and to prevent any and all persons from wrongfully interfering with all persons arriving on interstate, local or suburban passenger trains at the Union Passenger Station and from wrongfully interfering with all persons taking outgoing interstate, local and suburban passenger trains. That he has never heard any complaints made by any persons who have arrived at or taken passage at said Union Passenger Station when interstate, local or suburban passenger trains against any of the defendants in the discharge of their duties as cab, or expressmen, or any complaint against them in plying their vocation along said south Canal street and sidewalk in front of said Union Passenger Station.

That these defendants in soliciting business aforesaid, and in conveying their passengers and baggage to and from said Station, conduct themselves in a gentlemanly and decent manner and in the same manner and way at said station as the agents, drivers and employees of the Parmalee Company conduct themselves in soliciting business for its carriages in said station and in the entrance way of said station and upon the sidewalk in front of said station.

BERNARD MCFANE.

Subscribed and sworn to before me, this 7th day of March, A. D. 1902.

[SEAL] RICHARD E. DOOLEY,
Notary Public.

State of Illinois, } ss.
Cook County, }

John Vaughn, being first duly sworn, deposes and says; that he is of lawful age and resides at No. 135 Canal street in the city of Chicago, and is engaged in the saloon and hotel business at No. 135 S. Canal street, on the west side of Canal street in the City of Chicago, directly opposite the Union Passenger Station which is located on the east side of said street directly opposite his place of business. That he has been engaged in business at this place for more than five years last past; that he is well acquainted with the said defendants in above entitled cause by sight and knows many of them by their names and that all of the defendants are cab drivers or expressmen and stand with their cabs and express wagons along on the east side of South Canal street in front of the Union Passenger Station, and wait for employment upon the east side of South Canal street in front of the Union Passenger Station upon street and sidewalk between Madison and Adams streets. That the Public Hack Stand is about four hundred (400) feet north of the main entrance to the Union Passenger Station where the cabs and horses stand, and that in going in and out of his place of business many times in the day, sees the cab and expressmen aforesaid upon the street and sidewalk upon South Canal street soliciting passengers and baggage for their vehicles.

Affiant further says that during this time, he sees many passengers who arrive upon the incoming trains who are solicited by defendants to ride in the defendants' vehicles, or carry their baggage, and that during all the time aforesaid he has seen none of the defendants in any way interfere with passengers who arrive on the
200 incoming trains, nor has he seen any of them in any way interfere with passengers who go into the Union Passenger Station to take outgoing trains. And from what he has seen and observed of the defendants in this case in carrying on their business as cab and expressmen of the City of Chicago, upon the east side of South Canal street and on sidewalk in front of the said Union Passenger Station and defendants do not prevent ingress or egress to or from the said Passenger Station at any of the entrances to or from the said Passenger Station. And has not heard them use loud or boisterous, vulgar or profane language, or lay hold of pas-

sengers in their attempts to solicit their patronage, or annoy, harass or impose any passenger arriving at the said Union Passenger Station on through trains, local or suburban trains. Nor has he seen at any time from eight to twenty of these defendants on the sidewalk in front of the main entrance to the said Union Passenger Station at any one time plying their vocation there. Nor has he seen them at any time obstruct the sidewalk or entrance to and from the said Passenger Station or prevent ingress or egress of passengers in coming out of the said entrances or going into the depot through the said entrances or in any way obstruct any of the entrances or prevent persons from passing in and out through the said entrances.

Affiant further says that so far as he has been able to observe and he has been in a position to observe, the streets and sidewalks have not been obstructed so as to prevent persons from passing in and out of the entrances to the said Union Passenger Station and in and upon the sidewalk and streets in front of the Union Passenger Station on said South Canal street. Nor have 201 vehicles upon the street or pedestrians upon the sidewalk been interfered with or prevented from freely traveling upon the said street and sidewalk on the east side of said South Canal street. Nor has he seen the defendants push or shove each other about upon the sidewalk in front of the Union Passenger Station, or making demonstrations or placing themselves in attitudes as if going to fight, or heard them using loud, boiestrous or profane language to each other or to any person or persons traveling upon the said street or sidewalk in front of the Union Passenger Station, aforesaid. But so far as he has been able to observe, the said defendants have carried on and are carrying on their vocation in a peaceable, quiet and gentlemanly manner. And so far as he has been able to observe, they are in no way improperly impose upon or interfering with passengers arriving on incoming trains at the said Passenger Station or with the passengers going to the said Passenger Station to take outgoing trains, or in any way injuring or interfering with the property of the Pennsylvania Company. And from his observation, no injury is being done to the property or persons arriving on incoming trains or going to the station to take outgoing trains. And that no injury results to his business or his property in any way that he can observe by virtue of the defendants using South Canal street and the sidewalks in front of his place of business and in front of the Union Passenger Station place of business, and that no injury or damage so far as he can observe, is being done to the business of complainant or Union Passenger Station or property of any persons by the defendants in carrying on their business as

cabmen and expressmen between Madison and Adams streets on South Canal street in the city of Chicago.

202 And that the defendants in plying their vocation along on the east side of South Canal street and sidewalk between Madison and Adams streets in front of said Union Passenger Station do not create a nuisance and that there has been at all times and now plenty of room for travel upon the sidewalk to and from said Station and plenty of room upon the streets for all vehicles to approach without interference the entrances to the Union Passenger Station.

Further that there are at all times of the day and night from one to three city policemen of the city of Chicago stationed in and about said Union Passenger Station to see that the laws and ordinances are enforced and obeyed, that relate to cab and expressmen, and that peace, quiet and order are maintained and to prevent any and all persons from wrongfully interfering with all persons arriving on interstate, local or suburban passenger trains at the Union Passenger Station, and from wrongfully interfering with all persons taking outgoing and interstate, local or suburban passenger trains. That he has never heard any complaints made by any persons who have arrived at or taken passage at said Union Passenger Station when interstate, local or suburban passenger trains against any of the defendants in the discharge of their duties as cab, expressmen, or any complaint against them implying their vocation along said South Canal street and sidewalk in front of said Union Passenger Station.

That these defendants in soliciting business aforesaid, and in conveying their passengers and baggage to and from said station conduct themselves in a gentlemanly and decent manner and in the same manner and way at said station as the agents, drivers and employees of the Parmalee Transfer Company conduct them-

203 selves in soliciting business for its carriages in said station and in the entrance way of said station and upon the sidewalk in front of said station.

JOHN VAUGHN.

Subscribers and sworn to before me, this 7th day of March, A. D' 1902.

[SEAL]

RICHARD E. DOOLEY,
Notary Public.

204 State of Illinois, } ss.
Cook County. }

Alfred Rice, being first duly sworn, deposes and says; that he is of lawful age and resides at No. 117 S. Canal street in the city of Chicago, and is engaged in business at No. 117 S. Canal Street, on the west side of Canal street in the City of Chicago, directly opposite the Union Passenger Station which is located on the east side of said street directly opposite his place of business. That he has been engaged in business at this place for more than five years last past; that he is well acquainted with the said defendants in above entitled cause by sight and knows many of them by their names and that all of the defendants are cab drivers or expressmen and stand with their cabs and express wagons along on the east side of South Canal Street in front of the Union Passenger Station, and wait for employment upon the east side of South Canal street in front of the Union Passenger Station upon street and sidewalk between Madison and Adams streets. That the Public Hack Stand is about four hundred (400) feet north of the main entrance to the Union Passenger Station where the cabs and horses stand, and that in going in and out of his place of business many times in the day, sees the cab and expressmen aforesaid upon the street and sidewalk upon South Canal street soliciting passengers and baggage for their vehicles.

Affiant further says that during this time, he sees many passengers who arrive upon the incoming trains who are solicited by defendants to ride in the defendants' vehicles, or carry their baggage, and that during all the time aforesaid he has seen none of the defendants
205 in any way interfere with passengers who arrive on the incoming trains, nor has he seen any of them in any way interfere with passengers who go into the Union Passenger Station to take outgoing trains. And from what he has seen and observed of the defendants in this case in carrying on their business as cab and expressmen of the City of Chicago, upon the east side of South Canal street and on sidewalk in front of the said Union Passenger Station and defendants do not prevent ingress or egress to or from the said Passenger Station at any of the entrances to or from the said Passenger Station. And has not heard them use loud or boisterous, vulgar or profane language, or lay hold of passengers in their attempts to solicit their patronage, or annoy, harass or impose any passenger arriving at the said Union Passenger Station on through trains, local or suburban trains. Nor has he seen at any time from eight to twenty of these defendants on the sidewalk in front of the main entrance to the said Union Passenger Station at any one time

plying their vocation there. Nor has he seen them at any time obstruct the sidewalk or entrance to and from the said Passenger Station or prevent ingress or egress of passengers in coming out of the said entrances or going into the depot through the said entrances or in any way obstruct any of the entrances or prevent persons from passing in and out through the said entrances.

Affiant says that so far as he has been able to observe, and he has been in a position to observe, the streets and sidewalks have not been obstructed so as to prevent persons from passing in and out of the entrances to the said Union Passenger Station and in and upon the sidewalk and street in front of the Union Passenger Station on said South Canal Street. Nor have vehicles upon the
206 street or pedestrians upon the sidewalk been interfered with or prevented from freely traveling upon the said street and sidewalk on the east side of said South Canal street. Nor has he seen the defendants push or shove each other about upon the sidewalk in front of the Union Passenger Station, or making demonstrations or placing themselves in attitudes as if going to fight, or heard them using loud, boisterous or profane language to each other or to any person or persons traveling upon the said street or sidewalk in front of the Union Passenger Station, aforesaid. But so far as he has been able to observe, the said defendants have carried on and are carrying on their vocation in a peaceable, quiet and gentlemanly manner. And so far as he has been able to observe, they are in no way improperly impose upon or interfering with passengers arriving on incoming trains at the said Passenger Station or with the passengers going to the said Passenger Station to take outgoing trains, or in any way injuring or interfering with the property of the Pennsylvania Company. And from his observation, no injury is being done to the property or persons arriving on incoming trains or going to the station to take outgoing trains. And that no injury results to his business or his property in any way that he can observe by virtue of the defendants using South Canal street and the sidewalks in front of his place of business and in front of the Union Passenger Station place of business, and that no injury or damage so far as he can see and observe, is being done to the business of complainant or Union Passenger Station or property of any persons by the defendants in carrying on their business as cabmen and expressmen between Madison and Adams streets on South Canal street in the city of Chicago.

207 And that the defendants in plying their vocation along on the east side of South Canal street and sidewalk between Madison and Adams streets in front of said Union Passenger Station do not create a nuisance and that there has been at all times and now

plenty of room for travel upon the sidewalk to and from said Station and plenty of room upon the streets for all vehicles to approach without interference the entrances to the Union Passenger Station.

Further that there are at all times of the day and night from one to three city policemen of the city of Chicago stationed in and about said Union Passenger Station to see that the laws and ordinances are enforced and obeyed, that relate to cab and expressmen, and that peace, quiet and order are maintained and to prevent any and all persons from wrongfully interfering with all persons arriving on interstate, local and suburban passenger trains at the Union Passenger Station, and from wrongfully interfering with all persons taking outgoing and interstate, local or suburban passenger trains. That he has never heard any complaints made by any persons who have arrived at or taken passage at said Union Passenger Station when interstate, local or suburban passenger trains against any of the defendants in the discharge of their duties as cab, or expressmen, or any complaint against them implying their vocation along said South Canal street and sidewalk in front of said Union Passenger Station.

That these defendants in soliciting business aforesaid, and in conveying their passengers and baggage to and from said station conduct themselves in a gentlemanly and decent manner and in the same manner and way at said station as the agents, drivers and em-
ployees of the Parmalee Transfer Company conduct themselves
208 in soliciting business for its carriages in said station and in the entrance way of said station and upon the sidewalk in front of said station.

A. RICE.

Subscribed and sworn to before me, this 7th day of March, A. D. 1902.

RICHARD E. DOOLEY,
Notary Public.

[SEAL]

209 State of Illinois, } ss.
Cook County. }

Herman W. A. Hacker, being first duly sworn, deposes and says; that he is of lawful age and resides at No. 415 Waubanse Ave. in the city of Chicago, and is engaged in the saloon business with his brother at No. 111 S. Canal street, on the west side of Canal street in the City of Chicago, directly opposite the Union Passenger station, which is located at the east side of said street directly opposite his place of business. That he has been engaged in business at

this place for more than five years last past; that he is well acquainted with the said defendants in above entitled cause by sight and knows many of them by their names and that all of the defendants are cab drivers or expressmen and stand with their cabs and express wagons along on the east side of South Canal street in front of the Union Passenger Station, and wait for employment upon the east side of South Canal street in front of the Union Passenger Station upon street and sidewalk between Madison and Adams streets. That the Public Hack Stand is about four hundred (400) feet north of the main entrance to the Union Passenger Station where the cabs and horses stand, and that in going in and out of his place of business many times in the day, sees the cab and expressmen aforesaid upon the street and sidewalk upon south Canal street soliciting passengers and baggage for their vehicles.

Affiant further says that during this time, he sees many passengers who arrive upon the incoming trains who are solicited by defendants to ride in the defendants' vehicles or carry their baggage,
210 and that during all the time aforesaid he has seen none of the defendants in any way interfere with passengers who arrived on the incoming trains, nor has he seen any of them in any way interfere with passengers who go into the Union Passenger Station to take outgoing trains. And from what he has seen and observed of the defendants in this case in carrying on their business as cab and expressmen of the city of Chicago, upon the east side of South Canal street and on sidewalk in front of the said Union Passenger Station said defendants do not prevent ingress or egress to or from the said Passenger Station at any of the entrances to or from the said Passenger Station. And has not heard them use loud or boisterous, vulgar or profane language, or lay hold of passeagers in their attempt to solicit their patronage, or annoy harass or impose any passengers arriving at the said Union Passenger Station on through trains, local or suburban trains, Nor has he seen at any time from eight to twenty of these defendants on the sidewalk in front of the main entrance to the said Uinon Passenger Station at any one time plying their vocation there.

Nor has he seen them at any time obstruct the sidewalk or entrance to and from the said Passenger station or prevent ingress or egress of passengers in coming out of the said entrances or going into the depot through the said entrances or in any way obstruct any of the entrances or prevent persons from passing in and out through the said entrances.

Affiant further says that so far as he has been able to observe and he has been in a position to observe, the streets and sidewalks

have not been obstructed so as to prevent persons from passing in and out of the said entrances to the said Union Passenger Station and in and upon the sidewalk and street in front of the Union Passenger Station on said south Canal street. Nor have
211 vehicles upon the street or pedestrians upon the sidewalk been interfered with or prevented from freely traveling upon the said street and sidewalk on the east side of said South Canal street. Nor has he seen the defendants push or shove each other about upon the sidewalk in front of the Union Passenger Station, or making demonstrations or placing themselves in attitudes as if going to fight, or heard them using loud, boisterous or profane language to each other or to any person or persons traveling upon the said street or sidewalk in front of the Union Passenger Station aforesaid. But so far as he has been able to observe, the said defendants have carried on and are carrying on their vocation in a peaceable, quiet and gentlemanly manner. And so far as he has been able to observe, they are in no way improperly impose upon or interfere with passengers arriving on incoming trains at the said Passenger Station or with the passengers going to the said Passenger Station to take outgoing trains, or in any way injuring or interfering with the property of the Pennsylvania Company. And from his observation no injury is being done to the property or persons arriving on incoming trains or going to the station to take outgoing trains. And that no injury results to his business or his property in any way that he can observe by virtue of the defendants using south Canal street and the sidewalks in front of his place of business and in front of the Union Passenger Station place of business, and that no injury or damages so far as he can see and observe, is being done to the business of complainant or Union Passenger Station or property of any persons by the defendants in carrying on their business as cabmen and expressmen between Madison and Adams streets on South Canal street in the city of Chicago.

And that the defendants in plying their vocation along on the east side of South Canal street and sidewalk between Madison
212 and Adams streets in front of said Union Passenger Station do not create a nuisance and that there has been at all times and now plenty of room for travel upon the sidewalk to and from said Station and plenty of room upon the streets for all vehicles to approach without interference the entrances to the Union Passenger Station.

Further that there are at all times of the day and night from one to three city policemen of the city of Chicago stationed in and about said Union Passenger Station to see that the laws and

ordinances are enforced and obeyed, that relate to cab and expressmen, and that peace, quiet and order are maintained and to prevent any and all persons from wrongfully interfering with all persons arriving on interstate, local or suburban passenger trains at the Union Passenger station and from wrongfully interfering with all persons taking outgoing interstate, local and suburban passenger trains. That he has never heard any complaints made by any persons who have arrived at or taken passage at said Union Passenger Station when interstate, local or suburban passengers trains against any of the defendants in the discharge of their duties as cab, or expressmen, or any complaint against them in plying their vocation along said south Canal street and sidewalk in front of said Union Passenger Station.

That these defendants in soliciting business aforesaid, and in conveying their passengers and baggage to and from said Station, conduct themselves in a gentlemanly and decent manner and in the same manner and way at said station as the agents, drivers and employees of the Parmalee Transfer Company conduct themselves in soliciting business for its carriages in said station and in the entrance way of said station and upon the sidewalk in front of said station.

HERMAN W. A. HACKER,

Subscribed and sworn to before me, this 7th day of March, A. D. 1902.

RICHARD E. DOOLEY,
Notary Public.

[SEAL]

213 State of Illinois, } ss.
Cook County, }

Arthur Stein, being duly sworn, depose and says; that he is of lawful age and resides at No. 113 to 115 in the city of Chicago, and is engaged in the hotel and saloon business at No. 113 to 115 S. Canal, on the west side of Canal street in the City of Chicago, directly opposite the Union Passenger station, which is located on the east side of said street directly opposite his place of business. That he has been engaged in business at this place for more than five years last past; that he is well acquainted with the said defendants in the above entitled cause by sight and knows many of them by their names and that all of the defendants are cab drivers or expressmen and stand with their cabs and express wagons along on the east side of South Canal street in front of the Union Passenger Station, and wait for employment upon the east side

of South Canal street in front of the Union Passenger Station upon street and sidewalk between Madison and Adams streets. That the public hack stand is about four hundred (400) feet north of the main entrance to the Union Passenger Station where the cabs and horses stand, and that in going in and out of his place of business many times in the day, sees the cab and expressmen aforesaid upon the street and sidewalk upon South Canal street soliciting passengers and baggage for their vehicles.

Affiant further says that during this time, he sees many passengers who arrive upon the incoming trains who are solicited by defendants to ride in the defendants' vehicles or carry their
214 baggage, and that during all the time aforesaid he has seen none of the defendants in any way interfere with passengers who arrived on the incoming trains, nor has he seen any of them in any way interfere with passengers who go into the Union Passenger Station to take outgoing trains. And from what he has seen and observed of the defendants in this case in carrying on their business as cab and expressmen of the city of Chicago, upon the east side of South Canal street and on sidewalk in front of the said Union Passenger Station said defendants do not prevent ingress or egress to or from the said Passenger Station at any of the entrances to or from the said Passenger Station. And has not heard them use loud or boisterous, vulgar or profane language, or lay hold of passengers in their attempts to solicit their patronage, or annoy harass or impose any passengers arriving at the said Union Passenger Station on through trains, local or suburban trains. Nor has he seen at any time from eight to twenty of these defendants on the side walk in front of the main entrance to the said Union Passenger Station at any one time plying their vocation there.

Nor has he seen them at any time obstruct the sidewalk or entrance to and from the said Passenger Station or prevent ingress or egress of passengers in coming out of the said entrances or going into the depot through the said entrances or in any way obstruct any of the entrances or prevent persons from passing in and out through the said entrances.

Affiant further says that so far as he has been able to observe, and he has been in a position to observe, the streets and sidewalks have not been obstructed so as to prevent persons from passing in and out of the entrances to the said Union Passenger Station and in and upon the sidewalk and street in front of the Union Passenger Station on said South Canal street. Nor have vehicles
215 upon the street or pedestrians upon the sidewalk been interfered with or prevented from freely traveling upon the said street and sidewalk on the east side of said South Canal street.

Nor has he seen the defendants push or shove each other about upon the sidewalk in front of the Union Passenger Station, or making demonstrations or placing themselves in attitudes as if going to fight, or heard them using loud, boisterous or profane language to each other or to any persons or persons traveling upon the said street or sidewalk in front of the Union Passenger Station aforesaid. But so far as he has been able to observe, the said defendants have carried on and are carrying on their vocation in a peaceable, quiet and gentlemanly manner, And so far as he has been able to observe, they are in no way improperly impose upon or interfering with passengers arriving on incoming trains at the said Passenger Station or with the passengers going to the said Passenger Station to take outgoing trains, or in any way injuring or interfering with the property of the Pennsylvania Company. And from his observation no injury is being done to the property or persons arriving on incoming trains or going to the station to take outgoing trains. And that no injury results to his business or his property in any way that he can observe by virtue of the defendants using south Canal street and the sidewalks in front of his place of business and in front of the Union Passenger Station place of business, and that no injury or damages so far as he can see and observe, is being done to the business of complainant or Union Passenger Station or property of any persons by the defendants in carrying on their business as cabmen and expressmen between Madison and Adams streets on South Canal street in the city of Chicago.

And that the defendants in plying their vocation along on the east side of South Canal street and sidewalk between Madison and
216 Adams streets in front of said Union Passenger Station do not create a nuisance and that there has been at all times and now plenty of room for travel upon the sidewalk to and from said Station and plenty of room upon the streets for all vehicles to approach without interference the entrances to the Union Passenger Station.

Further that there are at all times of the day and night from one to three city policemen of the city of Chicago stationed in and about said Union Passenger Station to see that the laws and ordinances are enforced and obeyed, that relate to cab and expressmen, and that peace, quiet and order are maintained and to prevent any and all persons from wrongfully interfering with all persons arriving on interstate, local or suburban passenger trains at the Union Passenger station and from wrongfully interfering with all persons taking outgoing interstate, local and suburban passenger trains. That he has never heard any complaints made by any persons who have arrived at or taken passage at said Union Passenger Station upon interstate, local or suburban passenger trains against any of the defendants in

the discharge of their duties as cab, or expressmen, or any complaint against them in plying their vocation along said South Canal street and sidewalk in front of said Union Passenger Station.

That these defendants in soliciting business aforesaid, and in conveying their passengers and baggage to and from said Station, conduct themselves in a gentlemanly and decent manner and in the same manner and way at said station as the agents, drivers and employees of the Parmalee Transfer Company conduct themselves in soliciting business for its carriages in said station and in the entrance way of said station and upon the sidewalk of said station.

ARTHUR STEIN.

Subscribed and sworn to before me, this 7th day of March, A. D. 1902.

RICHARD E. DOOLEY,
Notary Public.

[SEAL]

217 State of Illinois } ss.
Cook County, }

James H. Sperbeck, being first duly sworn, deposes and says; that he is of lawful age and resides at No. 150 S. Sacramento Ave. in the city of Chicago, and is engaged in the employment agency business at No. 119 S. Canal street on the west side of Canal street in the City of Chicago, directly opposite to the Union Passenger Station which is located on the east side of said street directly opposite his place of business. That he has been engaged in business at this place for more than five years last past; that he is well acquainted with the said defendants in above entitled cause by sight and knows many of them by their names and that all of the defendants are cab drivers or expressmen and stand with their cabs and express wagons along on the east side of South Canal street in front of the Union Passenger Station, and wait for employment upon th east side of South Canal street in front of the Union Passenger Station upon street and sidewalk between Madison and Adams streets. That the Public Hack Stand is about four hundred (400) feet north of the main entrance to the Union Passenger Station where the cabs and horses stand, and that in going in and out of his place of business many times in the day, sees the cab and expressmen aforesaid upon the street and sidewalk upon South Canal street soliciting passengers and baggage for their vehicles.

Affiant further says that during this time, he sees many passengers who arrive upon the incoming trains who are solicited by defendants to ride in the defendants' vehicles, or carry their baggage, and that

during all the time aforesaid he has seen none of the defendants in any way interfere with passengers who arrive on the incoming
218 trains, nor has he seen any of them in any way interfere with passengers who go into the Union Passenger Station to take outgoing trains. And from what he has seen and observed of the defendants in this case in carrying on their business as cab and expressmen of the City of Chicago, upon the east side of South Canal street and on sidewalk in front of the said Union Passenger Station and defendants do not prevent ingress or egress to or from the said Passenger Station at any of the entrances to or from the said Passenger Station. And has not heard them use loud or boisterous, vulgar or profane language, or lay hold of passengers in their attempts to solicit their patronage, or annoy, harass or impose any passenger arriving at the said Union Passenger Station on through trains, local or suburban trains. Nor has he seen at any time from eight to twenty of these defendants on the sidewalk in front of the main entrance to the said Union Passenger Station at any one time plying their vocation there. Nor has he seen them at any time obstruct the sidewalk or entrance to and from the said Passenger Station or prevent ingress or egress of passengers in coming out of the said entrances or going into the depot through the said entrances or in any way obstruct any of the entrances or prevent persons from passing in and out through the said entrances.

Affiant further says that so far as he has been able to observe, and he has been in a position to observe, the streets and sidewalks have not been obstructed so as to prevent persons from passing in and out of the entrances to the said Union Passenger Station and in and upon the sidewalk and street in front of the Union Passenger Station on said South Canal street. Nor have vehicles upon the street
219 or pedestrians upon the sidewalk been interfered with or prevented from freely traveling upon the said street and sidewalk on the east side of said South Canal street. Nor has he seen the defendants push or shove each other about upon the sidewalk in front of the Union Passenger Station, or making demonstrations or placing themselves in attitudes as if going to fight, or heard them using loud, boisterous or profane language to each other or to any person or persons traveling upon the said street or sidewalk in front of the Union Passenger Station, aforesaid. But so far as he has been able to observe, the said defendants have carried on and are carrying on their vocation in a peaceable, quiet and gentlemanly manner. And so far as he has been able to observe, they are in no way improperly impose upon or interfering with passengers arriving on incoming trains at the said Passenger Station or with the passengers going to the said

Passenger Station to take outgoing trains, or in any way injuring or interfering with the property of the Pennsylvania Company. And from his observation, no injury is being done to the property or persons arriving on incoming trains or going to the station to take outgoing trains. And that no injury results to his business or his property in any way that he can observe by virtue of the defendants using South Canal street and the sidewalks in front of his place of business and in front of the Union Passenger Station place of business, and that no injury or damage so far as he can see and observe, is being done to the business of complainant or Union Passenger Station or property of any persons by the defendants in carrying on their business as cabmen and expressmen between Madison and Adams streets on South Canal street in the city of Chicago.

220 And that the defendants in plying their vocation along on the east side of South Canal street and sidewalk between Madison and Adams streets in front of said Union Passenger Station do not create a nuisance and that there has been at all times and now plenty of room for travel upon the sidewalk to and from said Station and plenty of room upon the streets for all vehicles to approach without interference the entrances to the Union Passenger Station.

Further that there are at all times of the day and night from one to three city policemen of the city of Chicago stationed in and about said Union Passenger Station to see that the laws and ordinances are enforced and obeyed, that relate to cab and expressmen, and that peace, quiet and order are maintained and to prevent any and all persons from wrongfully interfering with all persons arriving on interstate, local or suburban passenger trains at the Union Passenger Station, and from wrongfully interfering with all persons taking outgoing and interstate, local or suburban passenger trains. That he has never heard any complaints made by any persons who have arrived at or taken passage at said Union Passenger Station when interstate, local or suburban passenger trains against any of the defendants in the discharge of their duties as cab, or expressmen, or any complaint against them implying their vocation along said South Canal street and sidewalk in front of said Union Passenger Station.

That these defendants in soliciting business aforesaid, and in conveying their passengers and baggage to and from said station conduct themselves in a gentlemanly and decent manner and in the same manner and way at said station as the agents, drivers and employees of the Parmalee Transfer Company conduct themselves

221 in soliciting business for its carriages in said station and in

the entrance way of said station and upon the sidewalk in front of said station.

JAMES H. SPERBECK.

Subscribed and sworn to before me, this 7th day of March, A. D. 1902.

RICHARD E. DOOLEY,
Notary Public.

[SEAL]

(Endorsed) Filed Mar. 8, 1902, S. W. Burnham, Clerk.

222 And on to-wit: the 11th day of March, 1902, there was filed in the clerk's office of said court in said entitled cause the affidavit of W. G. White, in words and figures following to-wit:

AFFIDAVIT OF WILLIAM G. WHITE.

United States of America,
Northern District of Illinois,
Northern Division,

IN THE CIRCUIT COURT OF THE UNITED STATES,

For the Northern District of Illinois,

Northern Division.

Pennsylvania Company,
vs.
Harry Donovan, *et al.*

William G. White, being first duly sworn, on oath states that he resides in the city of Evanston, County of Cook and State of Illinois; that he is secretary or superintendent of the Union Passenger Station, situated between Madison and Adams streets on the east side of Canal street in said city of Chicago, and that he has been acting as such secretary since 1897.

That as such secretary as aforesaid it is necessary for him to have a general supervision of the conditions of the said Union Passenger Station and all matters and things relating in any way to said Union Passenger Station.

This affiant further states that he is acquainted with and personally knows all of the officers of the different railways enter-

ing said station, who have their respective offices in said Union Passenger Station.

This affiant further states that he personally knows and is acquainted with the conditions under which the solicitors for the Parmalee Transfer Company are allowed to enter the main entrance to said Union Passenger Station.

223 And this affiant further states that none of the officers, agents or employes of said station, or the officers, agents or employes of any of said railway companies so entering and using said station are entitled to or do receive any percentage of the earnings of the Parmalee Transfer Company which it receives by the operation of the cabs and carriages as aforesaid.

And this affiant further states that he knows positively that none of the officers or agents of the said Union Passenger Station or of the railroads entering said passenger station are entitled to or do ride free in the cabs and carriages operated by the said Parmalee Transfer Company or have any passes or tickets allowing or entitling them to ride free in said cabs and carriages.

W. G. WHITE.

Subscribed and sworn to before me, this 11th day of March, A. D. 1902.

CLABURN S. JONES,
Notary Public.

[SEAL]

(Endorsed) Filed in open court March 11, 1902, S. W. Bunham, Clerk.

224 And on to-wit: the 11th day of March, 1902, being one of the days of the regular December term of said Court, 1901, in the record of proceedings thereof in said entitled cause before the Hon. Christian C. Kohlsaat, District Judge, appears the following entry to-wit:

ORDER OF MARCH 11, 1902.

Pennsylvania Company,
vs.
Harry Donovan, *et al.* } 26191.

Now come the parties by their solicitors, This cause comes on to be heard upon the motion of complainant for a preliminary injunction. The Court after hearing the arguments of counsel takes the matter under advisement with leave to complainant to file its brief

in one week; the defendants to file their brief in one week thereafter; and the complainant is hereby given three days in which to file its reply brief.

225 And on to-wit: the 5th day of June, 1902, there was filed in the clerk's office of said Court in said entitled cause a certain Notice of Motion in words and figures following to-wit:

NOTICE OF MOTION.

IN THE UNITED STATES CIRCUIT COURT,

Northern District of Illinois,

Northern Division.

Pennsylvania Company,
vs.
Harry Donovan, *et al.* } General Number 26191.

To Altgeld, Darrow & Thompson and R. J. Cooney, solicitors for defendants.

Please take notice that upon Thursday, the 5th day of June, A. D. 1902, at ten o'clock A. M. or as soon thereafter as counsel can be heard, before his Honor, Judge Kohlsaat, in his Court room, we shall ask for the entry of the order in the above entitled cause granting a temporary injuncton in accordance with the draft of order herewith handed you, at which time and place you may appear.

We also herewith hand you copy of the opinion of the Court read by Judge Kohlsaat from the bench, in the above entitled cause. Dated June 4, A. D. 1902.

Yours, etc.

LOESCH BROTHERS & HOWELL,
Solicitors for Complainant.

Received a copy of the above notice, order and opinion, this 4th day of June, A. D. 1902.

ALTGELD, DARROW AND THOMPSON,
RICHARD J. COONEY,

(Endorsed) Filed June 5, 1902, Marshall E. Sampsell, Clerk.

226 And on to-wit: the 17th day of July, being one of the days of the regular July term of said Court, in the record of proceedings thereof in said entitled cause before the Hon. Christian C. Kohlsaat, District Judge, appears the following entry to-wit:

ORDER OF JULY 17, 1902.

Pennsylvania Company,
26191. vs.
Harry Donovan, *et al.*

On motion of the defendants' solicitor, the complainant's counsel consenting thereto, leave is hereby given to file a copy of the ordinances of the City of Chicago introduced by the defendants on the hearing of the motion for a preliminary injunction herein; said copy of ordinances to be filed nunc pro tunc as of June 6, 1902.

227 And on to-wit: the 17th day of July, 1902, there was filed in the clerk's office of said Court in said entitled cause nunc pro tunc as of June 6, 1902, a certain copy of City Ordinances in words and figures following to-wit:

228 ## CITY ORDINANCE.

UNITED STATES CIRCUIT COURT,

Northern District of Illinois,

Northern Division.

Pennsylvania Company
vs.
Harry Donovan, *et al.*
} General Number 26,191.

At a hearing of the above entitled suit for an application for temporary injunction of said suit, the following ordinances of the Revised Code of the City of Chicago were read and introduced as evidence in said suit:

Section 498. (Stands established) Any duly licensed hackney coach, cab or other vehicle for the conveyance of passengers, may stand, while waiting for employment, at any of the following places, and for the period of time hereinafter provided:

Stand No. 1. The north side of Washington streeet, between Clark and LaSalle streets.

Stand No. 2. That portion of the west side of Clark Street between fifty feet from the southwest corner of Randolph and Clark streets, and running thence to Washington Street.

Stand No. 3. The south side of Randolph Street, between La Salle and Clark Streets.

Stand No. 4. The east side of Canal Street, occupying one hundred and ten feet between Adams and Madison streets, as the superintendent of police shall direct.

Stand No. 5. At all theatres and other places of public amusement fifteen minutes before the conclusion of the performance.

Stand No. 6. At all railroad depots ten minutes previous to the arrival of all passenger trains.

229 Stand No. 7. On such street corners from ten p. m. until sunrise, as the superintendent of police shall designate.

Stand No. 8. The east side of Clark street, between Adams and Jackson streets.

Stand No. 9. The west side of Dearborn street, between Adams and Jackson streets.

Stand No. 10. At such other places where the occupants of the premises in front of which it is desired to stand for employment, shall give permission in writing, to the owner or driver so to do; and it shall be approved, in writing, by the superintendent of police: Provided, it shall not be lawful to stand while waiting for employment at any place within three hundred feet of stands 1, 2, 3, 4, 8, and 9, as described in this chapter: Provided, it shall not be lawful to stand for employment in front of an hotel where a stand has been established on the opposite side of the street from such hotel.

Section 503. (Duty of Police.) It shall be the duty of the several officers and members of the police department to see that all the ordinances regulating hackney coaches, cabs, and all other vehicles for the conveyance of persons for hire, are strictly complied with, and any policeman shall have power and authority to order away from the stands, and from all other places, any hackney coach, carriage or cab not provided with a number or with lamps fixed up, lighted and numbered, as hereinbefore required, or not furnished with proper and suitable harness or horses, or whenever the same shall be improperly obstructing the way or street, or whenever the horses attached thereto are unruly, or whenever the driver or person having charge of any such hackney coach, carriage or cab is intoxicated, or in any manner misbehaves himself. If any person having charge of such hackney 30 coach, carriage or cab, shall refuse or neglect to obey any such order, he or they shall forfeit and pay for every such offense the sum of five dollars, to be recovered from the owner or driver of such hackney coach, carriage or cab, severally and respectively.

Section 499. (Penalty.) Any person violating any of the provisions of the foregoing section, or refusing to comply therewith, shall be fined not less than five dollars and not more than twenty-five dollars.

.....

To the clerk of the U. S. Circuit Court.

We consent to above three pages of typewritten matter being inserted as part of the record in the above entitled case and same may be entered nunc pro tunc as of June 6, 1902.

LOESCH BROS. & HOWELL &
E. A. BANCROFT,
Compts,' Solrs.

(Endorsed) Filed July 17, 1902 Nunc pro tunc as of June 6, 1902. Marshall E. Sampsell, Clerk.

231 And on to-wit: the 1st day of July, 1902, there was filed as of June 6th, 1902, in the clerk's office of said Court in said entitled cause a certain Opinion in words and figures following to-wit:

OPINION.

IN THE UNITED STATES CIRCUIT COURT,

Northern District of Illinois,

Northern Division.

Pennsylvania Company,
vs.
Donovan, *et al.* } No. 26191

Kohlsaat, District Judge:—

Complainant files its bill to enjoin defendants from

1st. Entering its station at Adams and Canal streets, in the city of Chicago, for the purpose of soliciting the custom of incoming passengers for cabs, carriages, express wagons and hotels respectively.

2nd: Occupying the sidewalk and street abutting the main entrance of the said station for said purposes; and

3rd: Congregating upon the sidewalk at the main or other entrance of said station, for said purposes.

I deem it clearly established by the great weight of authority in England and the United States, that complainant is entitled to the relief prayed for as to said first contention.

As to the second contention, the complainant is entitled to the use of the street and sidewalk abutting upon its said station property, in common with the public, for certain purposes. Neither it nor the defendants have the right to a monopoly thereof. Each of the parties hereto, as well as the public generally, have the right to use the same with reasonable regard to the rights of all others. The right to the use thereof for the purposes of access
232 to and egress from said station does not belong to, nor may it be appropriated, by any one at the expense of the others. For certain purposes, complainant's station is charged with a public use. It invites the public to become its patrons and therefore whatever right of frontage it has stands charged with the rights of all the public to use the same in such manner as is consistent with the rights of all. If the Parmalee Transfer Co. has any rights superior to those of defendants and the public in this respect, they must arise from public considerations and not from any contract with complainant.

The bill alleges that "all tickets of interstate passengers arriving at and departing from said station, known as through tickets, have attached thereto a check or coupon for conveyance through the city of Chicago to the station of any connecting line of railroad designated on such through tickets and not running into or out of said passenger station; and that your orator and the said other railway corporations hereinbefore named have contracts for the use of a line of omnibuses or conveyances for the performance of the service called for by said coupons or checks, and that said omnibuses or conveyances so employed by contract form the only regular connecting line of transportation between your orator's said station and the stations of other railways in the city of Chicago, and many hundreds of passengers are each day received at said station and depart from said station in omnibuses from and to the various other railway stations next hereinafter named, and the hotels of the city of Chicago."

The affidavits support this allegation. The lines of omnibuses referred to are those of the Parmalee Transfer Co. This company has facilities for carrying large numbers of passengers and undoubtedly is an agent for the protection of the traveling public, making it in many respects an intermediate carrier. However, its
233 rights in the premises are superior to those of the defendants only in so far as its service exceeds that of defendants—a mere question of degree. All of the parties hereto, as well as the general

public, have the right to use the street and sidewalk abutting upon complainant's station, to just the extent that it may be necessary for the transaction of their respective business with complainant and the other railroad companies using said station, in the delivery and receipt of passengers and baggage; subject, always, to the requirement that such use shall be consistent with the rights of the public. In no case could it be insisted that, in a situation such as is described in the bill and affidavits, any one should be permitted to occupy these places for the purpose of soliciting patronage. They belong to the public for ingress and egress to and from the station and that fact must be the controlling principle upon which such rights are to be determined. Complainant is entitled to the relief sought by its bill in this regard so far as it seeks to restrain defendants from occupying said positions for the purpose of soliciting business. For the other objects before indicated, defendants are just as much entitled to the reasonable and relative use thereof as the complainant or the Parmalee Company.

I am aware that difficulties may arise in the application of this rule to the case at bar, and therefore the parties will be given the right to apply to the court from time to time as occasion may require.

So far as it is sought to restrain defendants from congregating upon the sidewalks abutting complainant's station and the various entrances thereof, for the purposes set out in the bill, the prayer of the bill is granted.

234 The duty of courts of equity to take cognizance of matters of this nature, under the facts stated in the bill, is too well established to require discussion here.

Counsel may draft an order for a preliminary injunction in accordance herewith.

(Endorsed) Filed July 1, 1902 as of June 6, 1902, Marshall E. Sampsell, Clerk.

235 And on to-wit: the 6th day of June, 1902, being one of the days of the regular December term of said Court, 1901, in the record of proceedings thereof in said entitled cause before the Hon. Christian C. Kahlsaat, District Judge, appears the following entry to-wit:

ORDER OF JUNE 6, 1902.

Pennsylvania Company,
vs.
Harry Donovan, George Callahan, Charles Lewis, M. M. Lee, Joseph Ward, W. H. Ashley, R. L. Taylor, I. Ganthier, I. Vaughn, Sanford McGill, George Baude, J. Baude, A. Reilly, James Casey, Thomas Casey, Edward Devaney, W. Owens, John Kerr, A. Johnson, Tom Quinlan, John Tievens, M. Brady, George Quinlan, George Gustin, John O'Toole, Nicholas Stokes, C. Connell, James Sullivan, Patrick Quinlan, C. Cunningham, J. Vaughn, Peter Taylor, William Simmons, Patrick Regan, James Regan, John J. Casey, M. Crowley, M. Geary, A. Cook, Charles P. Engle, Eugene Gibbs and John Casey, } 26191

And now on this day comes again the complainant by Loesch Brothers and Howell, and E. A. Bancroft, Esquire, its solicitors, and the defendants Harry Donovan, George Callahan, Charles Lewis, M. M. Lee, Joseph Ward, W. H. Ashley, R. L. Taylor, I. Ganthier, I. Vaughn, Sanford McGill, George Baude, J. Baude, A. Reilly, James Casey, Thomas Casey, Edward Devaney, W. Owens, John Kerr, A. Johnson, Tom Quinlan, John Tievens, M. Brady, George Quinlan, George Gustin, John O'Toole, Nicholas Stokes, C. Connell, 236 James Sullivan, Patrick Quinlan, C. Cunningham, J. Vaughn, Peter Taylor, William Simmons, Patrick Regan James Regan, John J. Casey, M. Crowley, M. Geary, A. Cook, Charles P. Engle, Eugene Gibbs and John Casey, by Altgeld, Darrow and Thompson and R. J. Cooney, their solicitors, and this cause having come on to be heard upon the motion of the complainants for a preliminary injunction in accordance with the bill of complaint said motion being based upon the bill of complaint herein, the answer of the defendant thereto, the replication to said answer, the affidavits filed in support of the allegations of said answer, and the affidavits filed by complainant in support of its bill.

And the Court having heard the arguments of counsel and being now fully advised in the premises, finds that the complainant is en-

titled to a temporary injunction in accordance with the prayer of its bill until the final hearing of this cause.

It is therefore ordered, adjudged and decreed that the said defendants, Harry Donovan, George Callahan, Charles Lewis, M. M. Lee, Joseph Ward, W. H. Ashley, R. L. Taylor, I. Ganthier, I. Vaugdn, Sanford McGill, George Baude, J. Baude, A. Reilly, James Casey, Thomas Casey, Edward Devaney, W. Owens, John Kerr, A. Johnson, Tom Quinlan, John Tievens, M. Brady, George Quinlan, George Gustin, John O'Toole, Nicholas Stokes, C. Connell, James Sullivan, Patrick Quinlan, C. Cunningham, J. Vaughn, Peter Taylor, William Simmons, Patrick Regan, James Regan, John J. Casey, M. Crowley, M. Geary, A. Cook, Charles P. Engle, Eugene Gibbs and John Casey, and all persons claiming to act under their or such of their authority, direction or control, or to whom notice of this order or injunction shall come, do absolutely desist and refrain from entering the passenger station of complainant at the corner of Adams and Canal streets in the city of Chicago, to solicit custom of the incoming passengers for cabs, carriages, express wagons or hotels, and do ab-
237 solutely desist and refrain from soliciting the custom of passengers for cabs, carriages, express wagons or hotels in said passenger station, and do absolutely desist and refrain from congregating upon the sidewalk in front of, adjacent to or about such entrances to said passenger station and from soliciting the custom of passengers for cabs, carriages, express wagons or hotels until the further order of the court in the premises.

All parties hereto are hereby given leave to apply to the court from time to time for such modification or application of this order as may be necessary by reason of any particular exigency of the case.

238 And on to-wit: the first day of July, 1902, came the defendants in said entitled cause by their solicitors and filed in the clerk's office of said Court their certain Petition for Appeal in words and figures following to-wit:

239 **PETITION FOR APPEAL.**

UNITED STATES CIRCUIT COURT.

Northern District of Illinois

Northern Division.

Pennsylvania Company, *Complainant,* vs. Harry Donovan, George Callahan, Charles Lewis, M. M. Lee, Joseph Ward, W. H. Ashley, R. L. Taylor, I. Ganthier, I. Vaughn, Sanford McGill, George Baude, J. Baude, A. Reilly, James Casey, Thomas Casey, Edward Devaney, W. Owens, John Kerr, A. Johnson, Tom. Quinlan, John Tievens, M. Brady, George Quinlan, George Gustin, John O'Toole, Nicholas Stokes, C. Connell, James Sullivan, Patrick Quinlan, C. Cunningham, J. Vaughn, Peter Taylor, William Simmons, Patrick Regan, James Regan, John J. Casey, M. Crowley, M. Geary, A. Cook, Charles P. Engle, Eugene Gibbs, and John Casey, *defendants and respondents.*	In Equity. Gen'l No. 26191

The above named defendants, Harry Donovan, George Callahan Charles Lewis, M. M. Lee, Joseph Ward, W. H. Ashley, R. L. Taylor, I. Ganthier, I. Vaughn, Sanford McGill, George Baude, J. Baude, A. Reilly, James Casey, Thomas Casey, Edward Devaney, W. Owens, John Kerr, A. Johnson, Tom. Quinlan, John Tievens, M. Brady, George Quinlan, George Gustin, John O'Toole, Nicholas Stokes, C. Connell, James Sullivan, Patrick Quinlan, C. Cunningham, J. Vaughn, Peter Taylor. William Simmons, Patrick Regan, James Regan, John J. Casey, M. Crowley, M. Geary, A. Cook, Charles P. Engle, Eugene Gibbs, and John Casey, conceiving themselves aggrieved by the order of the Court in granting a temporary injunction in said suit, entered on June 6th, 1902, in the above enti-
240 tled proceeding, doth hereby appeal from the said order to the United States Circuit Court of Appeals for the Seventh

Circuit to be holden in the City of Chicago and State of Illinois, and they pray that this, their appeal, may be allowed; and that a transcript of the record and proceedings and papers upon which the said order was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Seventh Circuit to be holden at Chicago, in the State of Illinois.

RICHARD J. COONEY and
DARROW AND THOMPSON.

Attorneys for the Defendants, Respondents and Appellants, Harry Donovan, George Callahan, Charles Lewis, M. M. Lee, Joseph Ward, W. H. Ashley, R. L. Taylor, I. Ganthier, I. Vaughn, Sanford McGill, George Baude, J. Baude, A. Reilly, James Casey, Thomas Casey, Edward Devaney, W. Owens, John Kerr, A. Johnson, Tom Quinlan, John Tievens, M. Brady, George Quinlan, George Gustin, John O'Toole, Nicholas Stokes, C. Connell, James Sullivan, Patrick Taylor, William Simmons, Patrick Regan, James Regan, John J. Casey, M. Crowley, M. Geary, A. Cook, Charles P. Engle, Eugene Gibbs, and John Casey, Chicago, Illinois.

Chicago, June 27th, 1902.

And now, to-wit, on June....., 1902, it is ordered that the appeal be allowed as prayed for.

.....

Circuit Judge.

(Endorsed) Filed July 1, 1902, Marshall E. Sampsell, Clerk.

241 And on the same day to-wit—the first day of July, 1902, came the defendants in said entitled cause by their solicitors and filed in the clerk's office of said Court their certain Assignment of errors in words and figures following to-wit:

242 ASSIGNMENT OF ERRORS.

United States of America,
Northern District of Illinois,
Norrthern Division.

IN THE CIRCUIT COURT OF THE UNITED STATES,

In and for the Northern District of Illinois,

Northern Division.

Pennsylvania Company,
Complainant,
vs.
Harry Donovan, George Callahan, Charles Lewis, M. M. Lee, Joseph Ward, W. H. Ashley, R. L. Taylor, I. Ganthier, L. Vaughn, Sanford McGill, George Baude, J. Baude, A. Reilly, James Casey, Thomas Casey, Edward Devaney, W. Owens, John Kerr, A. Johnson, Tom. Quinlan, John Tievens, M. Brady, George Quinlan, George Gustin, John O'Toole, Nicholas Stokes, C. Connell, James Sullivan, Patrick Quinlan, C. Cunningham, J. Vaughn, Peter Taylor, William Simmons, Patrick Regan, James Regan, John J. Casey, M. Crowley, M. Geary, A. Cook, Charles P. Engle, Engene Gibbs, and John Casey,
Defendants.

In Equity,
Gen'l No. 26191.

And now come the above named defendants and say that the order and decree in this cause sustaining the complainant's Bill of Complaint and issuing the preliminary or temporary injunction herein, for want of equity, is erroneous and against the just rights of the above named defendants, and they assign the following errors.

The Uuited States Circuit Court for the Northern District of Illinois erred as follows;

243 1st. That the said Court erred in entering said order and decree of June 6th, 1902, that these defendants do absolutely desist and refrain from entering the passenger station of the com-

plainant at the corner of Adams and Canal Streets in the City of Chicago, to solicit the custom of incoming passengers for cabs, carriages, express wagons or hotels, and do absolutely desist and refrain from soliciting the custom of passengers or cabs, carriages, express wagons or hotels in said passenger station, and do absolutely desist and refrain from congregating upon the sidewalk in front of, adjacent to, or about such entrances to said passenger station and soliciting the custom of passengers for cabs, carriages, express wagons or hotels, until the further order of the Court.

2nd. That the said Court erred in entering the said decree and order of June 6th, 1902, restraining these defendants who are engaged in the carriage of passengers and baggage from soliciting and receiving passengers and baggage of incoming passengers at the said station for carriage and their vehicles.

3rd. That the decree of June 6th, 1902, restraining the defendants and commanding them that they absolutely desist and refrain from entering the passenger station of complainant, as set forth in said decree or order of temporary injunction is erroneous and contrary to law.

4th. That the said order and decree of temporary injunction, entered by the said Court in this case, on June 6th, 1902, is contrary to equity and not warranted in equity and against the legal rights of these defendants and contrary to public policy.

244 5th. That the said Court erred in its said finding that the complainants were entitled to a temporary injunction in accordance with the prayer of the said bill and in entering the said decree or order on June 6th, 1902, on said finding.

6th. That the said Court erred in not refusing said order and decree of injunction, and in not denying the prayer of the said bill for temporary injunction and the prayer of said motion.

7th. The Court erred in not dismissing the bill of complainant filed herein upon the hearing for want of equity.

8th. The Court erred in not dismissing the bill of complainant filed herein for want of jurisdiction, as the complainant has shown no damages to the extent of Two Thousand Dollars ($2,000.00) or any other sum to give the said Court jurisdiction of the said subject matter involved in this suit.

9th. The Court erred in issuing said order of June 6th, 1902, in restraining these defendants from using the street and sidewalk, where they were using and occupying the same, with the consent and acquiescence of the municipal authorities of Chicago, and the Court erred in enjoining such use.

10th. The Court erred in granting the order and decree of temporary injunction of June 6th, 1902, in this suit, as the complainant had an adequate remedy at law.

11th. The Court erred in said order and decree of June 6th, 1902, in holding that the complainant has a right to make arbitrary rules discriminating as to who may occupy stands for hacks and cabs at the complainant's depot, as common carriers of passengers and baggage.

245 12th. The Court erred in its findings in this case and erred in its findings both upon the law and the facts, and in its holding that the complainant can give the exclusive privilege to one bus and carriage company in its depot and exclude other hack and expressmen therefrom, thereby creating a monopoly which is in violation of law, equity and against public policy.

13. The Court erred in holding in this case that the complainant may designate a place in its depot for solicitors of one cab company to stand and solicit passengers and baggage on incoming passenger trains for one particular line of hacks and exclude solicitors therefrom who represent other hacks and cabs.

14. The complainant in this case has refused to do equity and the Court erred in granting equitable relief where the complainant has persistently refused to do equity.

15. The Court erred in its said decree and order entered in this case in regulating the business of common carriers in the City of Chicago by a temporary writ of injunction; which business is regulated by the ordinances of the City of Chicago and under the immediate control and supervision of the police power of the City of Chicago.

16. The Court erred in its said order of June 6th, 1902, in restraining the use of the sidewalk and street by these defendants, the use and occupancy of the street being under the immediate control and supervision of the City Council.

246 In order that the foregoing Assignment of Errors may be and appear of record, the defendants present the same to the Court and pray that such disposition be made thereof as in accordance with the law and statute of the United States in such case made and provided, and pray a reversal of the said order and decree entered in this Court and that the Bill of Complaint filed herein by the complainant be dismissed for want of equity.

Harry Donovan, George Callahan, Charles Lewis, M. M. Lee, Joseph Ward, W. H. Ashley, R. L. Taylor, I. Ganthier, L. Vaughn, Sanford McGill, George Baude, J. Baude, A. Reilly, James Casey, Thomas Casey, Edward Devaney, W. Owens, John Kerr, A. Johnson, Tom. Quinlan, John Tievens, M. Brady, George Quinlan, George Gustin, John O'Toole, Nicholas Stokes, C. Connell, James Sullivan, Patrick Quinlan, C. Cunningham, J. Vaughn, Peter Taylor, William Simmons, Patrick Regan, James Regan, John J. Casey, M. Crowley, M.

Geary, A. Cook, Charles P. Engle, Eugene Gibbs, and John Casey, Defendants.

By R. J. COONEY,
DARROW & THOMPSON,
Their Solicitors.

(Endorsed) Filed July 1, 1902, Marshall E. Sampsell, Clerk.

247 And on to-wit: the first day of July, 1902, being one of the days of the regular December term of said Court 1901 in the record of proceedings thereof in said entitled cause before the Hon. Christian C. Kohlsaat, District Judge, appears the following entry to-wit:

ORDER OF JULY 1, 1902, ALLOWING APPEAL.

Pennsylvania Company,
26191. *vs.* } In Chancery.
Harry Donovan, *et al.*

Now come the defendants by their solicitors, and present their petition for appeal and assignments of error and bond on appeal in the penalty of three hundred dollars, signed by the National Surety Company, as security, which bond is approved by the court and ordered to be filed, and thereupon It is Ordered that said appeal be allowed to the United States Circuit Court of Appeals for this Circuit, returnable in thirty days from this date.

248 And on the same day to-wit: the first day of July, 1902, there was filed in the clerk's office of said court in said entitled cause a certain Bond on Appeal in words and figures following to-wit:

BOND ON APPEAL.

Know All Men by these Presents, that we, Harry Donovan, George Callahan, Charles Lewis, M. M. Lee, Joseph Ward, W. H. Ashley, R. L. Taylor, I. Ganthier, L. Vaughn, Sanford McGill, George Baude, J. Baude, A. Reilly, James Casey, Thomas Casey, Edward Devaney, W. Owens, John Kerr, A. Johnson, Tom Quinlan, John Tievens, M. Brady, George Quinlan, George Gustin, John O'Toole, Nicholas

Stokes, C. Connell, James Sullivan, Patrick Quinlan, C. Cunningham, J. Vaughn, Peter Taylor, William Simmons, Patrick Regan, James Regan, John J. Casey, M. Crowley, M. Geary, A. Cook, Charles P. Engel, Eugene Gibbs and John Casey, as principals and National Surety Company, a corporation, existing under & created by the laws of the state of New York and held and firmly bound unto the Pennsylvania Company in the full and just sum of three hundred dollars ($300.00) to be paid to the said Pennsylvania Company, its certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents. Sealed with our seals and dated this first day of July, in the year of our Lord one thousand nine hundred and two.

249 Whereas legally at a term of the Circuit Court of the United States for the Northern District of Illinois, Northern Division, in a suit depending in the said Court between the said Pennsylvania Company and the above named principals, entitled Harry Donovan and et al, an order for a preliminary injunction was entered against the said, Harry Donovan, George Callahan, Charles Lewis, M. M. Lee, Joseph Ward, W. H. Ashley R. L. Taylor, I. Ganthier, L. Vaughn, Sanford McGill, George Baude, J. Baude, A. Reilly, James Casey, Thomas Casey, Edward Devaney, W. Owens, John Kerr, A. Johnson, Tom. Quinlan, John Tievens, M. Brady, George Quinlan, George Gustin, John O'Toole, Nicholas Stokes, C. Connell, James Sullivan, Patrick Quinlan, C. Cunningham, J. Vaughn, Peter Taylor, William Simmons, Patrick Regan, James Regan, John J. Casey, M. Crowley, M. Geary, A. Cook, Charles P. Engel, Eugene Gibbs and John Casey, and the said Harry Donovan, George Callahan, Charles Lewis, M. M. Lee, Joseph Ward, W. H. Ashley, R. L. Taylor, I. Ganthier, L. Vaughn, Sanford McGill, George Baude, J. Baude, A. Reilly, James Casey, Thomas Casey, Edward Devaney, W. Owens, John Kerr, E. Johnson, Tom Quinlan, John Tievens, M. Brady, George Quinlan, George Gustin, John O'Toole, Nicholas Stokes, C. Connell, James Sullivan, Patrick Quinlan, C. Cunningham, J. Vaughn, Peter Taylor, William Simmons, Patrick Regan, James Regan, John J. Casey, M. Crowley, M. Geary, A. Cook, Charles P. Engle, Eugene Gibbs and John Casey, having obtained an appeal to reverse the said order granting a preliminary injunction in the aforesaid suit, and a citation directed to said the Pennsylvania Company citing and ad-

250 monishing it to be and appear at a United States Circuit Court of Appeals for the Seventh Circuit, to be holden at Chicago within thirty days from the date hereof.

Now, the condition of the above obligation is such, that if the said Harry Donovan, George Callahan, Charles Lewis, M. M. Lee, Joseph Ward, W. H. Ashley, R. L. Taylor, I. Ganthier, L. Vaughn, Sanford

Mc Gill, George Baude, J. Baude, A. Reilly, James Casey, Thomas Casey, Edward Devaney, W. Owens, John Kerr, A. Johnson, Tom Quinlan, John Tievens, M. Brady, George Quinlan, George Gustin, John O'Toole, Nicholas Stokes, C. Connell, James Suillvan, Patrick Quinlan, C. Cunningham, J. Vaughn, Peter Taylor, William Simmons Patrick Regan, James Regan, John J. Casey, M. Crowley, M. Geary, A. Cook, Charles P. Engel, Eugene Gibbs, and John Casey, shall prosecute their appeal to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void else to remain in full force and virtue.

R. L. Taylor,	[seal]	Eugene Gibbs,	[seal]
Chas. Lewis,	[seal]	George Callahan,	[seal]
Sanford McGill,	[seal]	Harry O. Donovan,	[seal]
Joseph Ward,	[seal]	M. M. Lee,	[seal]
James Casey,	[seal]	W. H. Ashley,	[seal]
Joe Baude,	[seal]	J. Vaughn,	[seal]
Albert Riley,	[seal]	J. Vaughn,	[seal]
George A. Baude,	[seal]	P. Quinlan,	[seal]
Edward Devanny,	[seal]	George Quinlan,	[seal]
Walter Owen,	[seal]	Thomas Quinlan,	[seal]
John E. Murphy,	[seal]	Chas. Cunningham,	[seal]
I. Ganthier,	[seal]	John Casey,	[seal]
Joe Veilleux,	[seal]	M. Geary,	[seal]
Thomas Casey,	[seal]	Wm. Simmons,	[seal]
John Kerr,	[seal]	M. Crowley,	[seal]
Jas. Sullivan,	[seal]	A. Cook,	[seal]
P. A. Taylor,	[seal]	Charles R. Engel,	[seal]
M. Brady,	[seal]	A. Johnson,	[seal]
John Tervin,	[seal]	Geo. Gusten,	[seal]
Jos. Regan,	[seal]	N. Stokes,	[seal]
Pat Regan,	[seal]	C. Connell,	[seal]
John O'Toole,	[seal]		

National Surety Company,

[seal]

Adams A. Goodrich,
Resident Vice President.
Henry L. Ayres,
Resident Assistant Secretary.

Sealed and delivered in persence of

W. J. Gibbons.

Approved July 1, 1902.

Kohlsaat, *J.*

O. K. Marshall E. Sampsell.

(Endorsed) Filed July 1, 1902, Marshall E. Sampsell, Clerk.

PRAECIPE FOR TRANSCRIPT OF RECORD.

UNITED STATES CIRCUIT COURT,

Northern District of Illinois,

Northern Division.

Pennsylvania Company
vs.
Harry Donovan, *et al.*

PRAECIPE FOR TRANSCRIPT OF RECORD.

The clerk of said Court will make up an authenticated transcript of the record in the above entitled cause, and will insert therein a copy of the notice for an application for temporary injunction.

Second: The pleadings in the cause.

Third: The decree of June 6th, 1902, and all other record entries.

Fourth: The evidence contained in the certificate of evidence.

Fifth: All the affidavits filed and read upon the hearing of the cause on behalf of the complainant and the defendants.

Sixth: The opinion of the judge filed in the cause.

Seventh: The assignment of errors.

Eighth: Petition for Appeal.

Ninth: Appeal Bond.

RICHARD J. COONEY and
DARROW & THOMPSON,
Solrs. for Defendants.

(Endorsed) Filed Jul. 1, 1902, Marshall E. Sampsell, Clerk.

252 Northern District of Illinois, } ss.
Northern Division, }

I, Marshall E. Sampsell, Clerk of the Circuit Court of the United States for said Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the proceedings had of record in said Court and made in accordance with praecipe filed in the above cause entitled Pennsylvania Company vs. Harry Donovan, George Callahan, Charles Lewis, M. M. Lee, Joseph Ward, W. H. Ashley, R. L. Taylor, I. Ganthier, I. Vaughn, Sanford,

McGill, George Baude, J. Baude, A. Reilly, James Casey, Thomas Casey, Edward Devaney, W. Owens, John Kerr, A. Johnson, Tom. Quinlan, John Tievens, M. Brady, George Quinlan, George Gustin, John O'Toole, Nicholas Stokes, C. Connell, James Suillvan, Patrick Quinlan, C. Cunningham, J. Vaughn, Peter Taylor, William Simmons, Patrick Egan, James Regan, John J. Casey, M. Crowley, M. Geary, A. Cook, Charles P. Engle, Eugene Gibbs amd John Casey, as the same appear from the original records and files of said Court now remaining in my custody and control.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at my office in the City of Chicago, in said District and Division, this 22nd day of July, 1902.

MARSHALL E. SAMPSELL,
[SEAL] *Clerk*

253 United States of America, } ss.

The President of the United States, to Pennsylvania Company, a corporation &c., Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals, for the Seventh Circuit, to be holden at Chicago, within thirty days from the date hereof, pursuant to an order allowing an appeal filed in the Clerk's Office of the Circuit Court of the United States for the Northern District of Illinois, Northern Division, wherein Harry Donovan *et al* are the appellants and you are appellees, to show cause, if any there be, why the judgment rendered against the said appellants, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Christian C. Kohlsaat Judge of the District Court of the United States, this first day of July, in the year of our Lord one thousand nine hundred and two.

KOHLSAAT,
J.

Recd a copy of above citation this 9th day of July A. D. 1902.

LOESCH BROS & HOWELL
Attys for Complt & Appellees.

Filed Jul 9, 1902 Marshall E. Sampsell, Clerk.

Northern District of Illinois, } ss.
Northern Division. }

I, Marshall E. Sampsell, Clerk of the Circuit Court of the United States for said Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the proceedings had of record in said court and made in accordance with the praecipe filed (except the Writ of Citation which was attached to the original transcript of the records herein, certified to the United States Circuit Court of Appeals for this Circuit on a former appeal) in the cause wherein the Pennsylvania Company is the complainant and Harry Donovan, *et al* are the defendants as the same appears from the original records and files of said Court now remaining in my custody and control.

In Testimony whereof, I have hereunto set my hand and affixed the seal of said Court at my office in the City of Chicago, in said District this first day of May, 1903.

MARSHALL E. SAMPSELL,
[SEAL] *Clerk.*

CIRCUIT COURT OF THE UNITED STATES,

Northern District of Illinois,

Northern Division.

Pennsylvania Company,
vs.
Harry Donovan, *et al.* } 26,191.

Be it remembered that on this day to-wit: the first day of May, 1903, being one of the days of the regular December term of said Court, 1902, in the record of proceedings thereof in the above entitled cause appears nunc pro tunc as of March 19, 1903, a certain entry in the words and figures following to-wit:

ORDER OF MAY 1, 1903,

Entered nunc pro tunc as of March 19, 1903.

Pennsylvania Company
vs.
Harry Donovan, *et al.* } 26191

It appearing to the Court that an order was entered herein on March 19, 1903, giving the defendants leave to file the Mandate from the United States Circuit Court of Appeals, and that the same was omitted to be engrossed upon the record of that day, It is Ordered that such leave to file Mandate be now entered nunc pro tunc as of said March 19, 1903.

And on to-wit: the 19th day of March, 1903, there was filed in the clerk's office of said court in said entitled cause a certain Mandate from the United States Circuit Court of Appeals for this Circuit a certain Mandate in words and figures following to-wit:

MANDATE.

United States of America, } ss.

The President of the United States of America, To the Honorable the Judges of the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

[SEAL] *Greeting:*

Whereas lately in the Circuit Court of the United States for the Northern District of Illinois, before you, or some of you, in a cause between Pennsylvania Company, Harry Donovan, George Callahn, Charles Lewis, M. M. Lee, Joseph Ward, W. H. Ashley, R. L. Taylor, I. Ganthier, I. Vaughn, Sanford McGill, George Baude, J. Baude, A. Reilly, James Casey, Thomas Casey, Edward Devany, W. Owens, John Kerr, A. Johnson, Tom Quilan, John Tievens, M. Brady, George Quinlan, George Gustin, John O'Toole, Nicholas Stokes, C. Connell, James Sullivan, Patrick Quinlan, C. Cunningham, J. Vaughn Peter Taylor, William Simmons, Patrick Regan, James Regan, John J. Casey, M. Crowley, M. Geary, A. Cook. Charles P. Engle Eugene Gibbs and John Casey, the decree entered on the sixth day of June, 1902, is in the words and figures following, to-wit:

It is therefore, Ordered, Adjudged and Decreed that the said defendants, Harry Donovan, George Callahn, Charles Lewis, M. M. Lee, Joseph Ward, W. H. Ashley, R. L. Taylor, I. Ganthier, I. Vaughn, Sanford McGill, George Baude, J. Baude, A. Reilly, James Casey, Thomas Casey, Edward Devany, W. Owens, John Kerr, A. Johnson, Tom Quilan, John Tievens, M. Brady, George Quinlan, George Gustin, John O'Toole, Nicholas Stokes, C. Connell, James Sullivan, Patrick Quinlan, C. Cunningham, J. Vaughn, Peter Taylor, William Simmons, Patrick Regan, James Regan, John J. Casey, M. Crowley, M. Geary, A. Cook, Charles P. Engle, Eugene Gibbs and John Casey, and all persons claiming to act under their or such of their authority, direction or control, or to whom notice of this order or injunction shall come, do absolutely desist and refrain from entering the passenger station of complainant at the corner of Adams and Canal streets in the city of Chicago, to solicit custom of the incoming passengers for cabs, carriages, express wagons or hotels, and do absolutely desist and refrain from soliciting the custom of passengers for cabs, carriages, express wagons or hotels in said passenger station, and do absolutely desist and refrain from congregating upon the sidewalk in front of, adjacent to or about such entrances to said passenger station and from soliciting the custom of passengers for cabs, carriages, express wagons or hotels until the further order of the court in the premises.

All parties hereto are hereby given leave to apply to the court from time to time for such modification or application of this order as may be necessary by reason of any particular exigency of the case, as by the inspection of the transcript of the record of the said Circuit Court which was brought into the United States Circuit Court of Appeals for the Seventh Circuit by virtue of an appeal, agreeably to the act of Congress in such case made and provided, fully and at large appears.

And whereas, in the term of October, in the year of our Lord one thousand nine hundred and two, the said cause came on to be heard before the said United States Circuit Court of Appeals for the Seventh Circuit, on the said Transcript of record, and was argued by counsel:—

On consideration whereof, It is now here Ordered, Adjudged and Decreed by this Court that the parts of the decree in the following words and figures, to-wit:

"It is therefore, ordered, adjudged and decreed that the said defendants, Harry Donovan, George Callahan, Charles Lewis, M. M. Lee, Joseph Ward, W. H. Ashley, R. L. Taylor, I. Ganthier, I. Vaughm Sanford McGill, George Baude, J. Baude, A. Reilly, James Casey, Thomas Casey, Edward Devany, W. Owens, John Kerr, A. Johnson, Tom Quinlan, John Tievens, M. Brady, George Quinlan, George Gustin, John O'Toole, Nicholas Stokes, C. Connell, James Sullivan, Patrick Quinlan, C. Cunningham, J. Vaughn, Peter Taylor, William Simmons, Patrick Regan, James Regan, John J. Casey, M. Crowley, M. Geary, A. Cook, Charles P. Engle, Eugene Gibbs and John Casey, and all other persons claiming to act under their or such of their authority, direction or control, or to whom notice of this order or injunction shall come, do absolutely desist and refrain from entering the passenger station of complainant at the corner of Adams and Canal streets in the city of Chicgao, to solicit custom of the incoming passengers for cabs, carriages, express wagons or hotels, and do absolutely desist and refrain form soliciting the custom of passengers for cabs, carriages, express wagons or hotels in said passenger station."

be and the same is hereby affirmed; and that the second part of said decree, in the following words and figures to-wit:

"and do absolutely desist and refrain from congregating upon the sidewalks in front of, adjacent to or about such entrances to said passenger station and from soliciting the custom of passengers for cabs, carriages, express wagons or hotels until the further order of the court in the premises."

be modified to restrain appellants from congregating upon the sidewalks in front of, adjacent to or about the entrance of appellees

passenger station in Chicago and from there soliciting the custom of passengers, so as to interfere with the ingress and egress of passengers and employees and when so modified the same be, and is hereby affirmed at the costs of the appellants.

You therefore, are hereby commanded that such further proceedings be had in said cause, as according to right and justice, and the laws of the United States, ought to be had, the said appeal notwithstanding.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the ninth day of February in the year of our Lord one thousand nine hundred and three.

EDWARD M. HOLLOWAY
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

(Endorsed) Filed March 19, 1903, Marshall E. Sampsell, Clerk

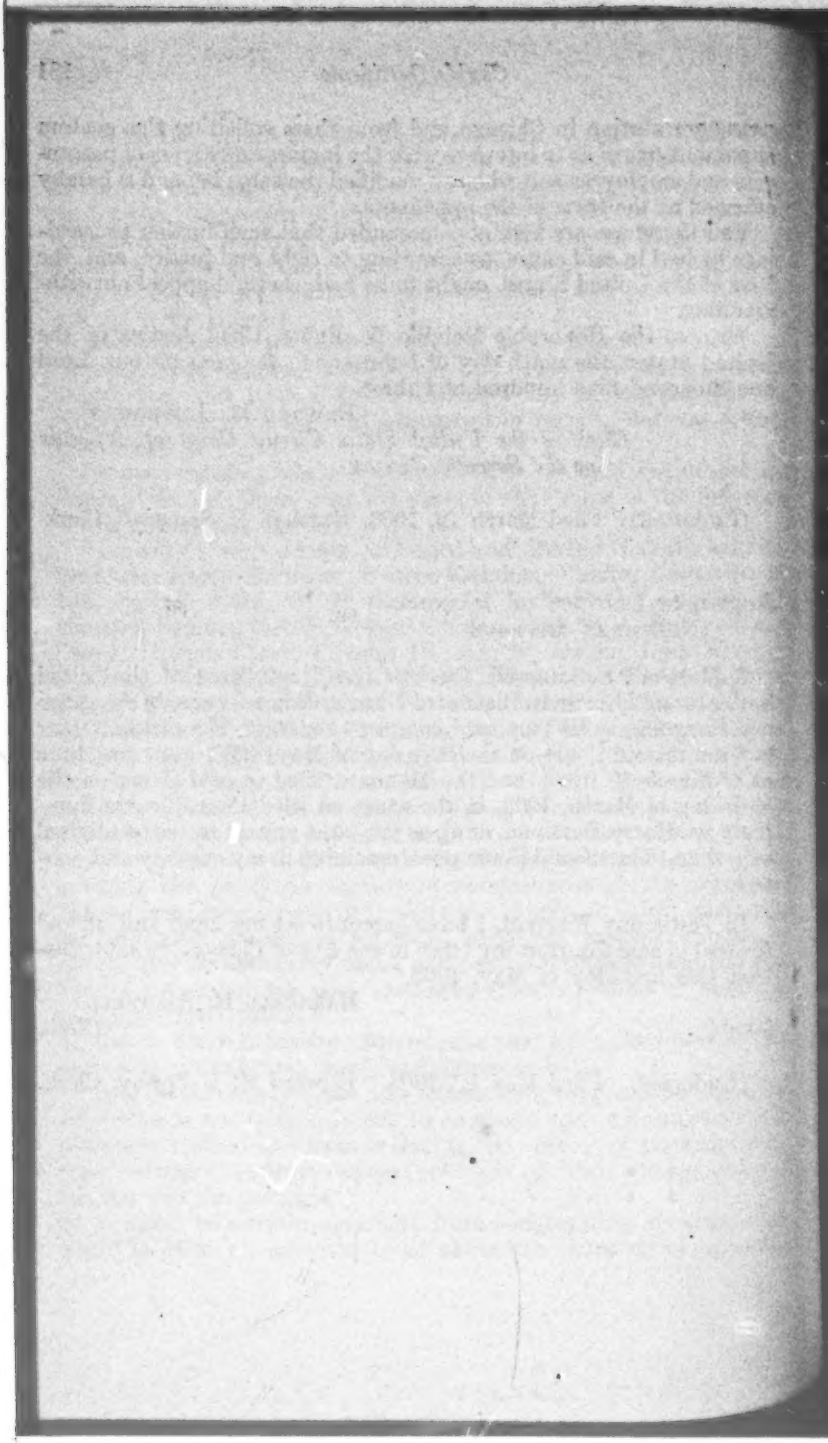
NORTHERN DISTRICT OF ILLINOIS, NORTHERN DIVISION. } ss.

I, Marshall E. Sampsell, Clerk of the Circuit Court of the United States for said Northern District of Illinois, do hereby certify the above and foregoing to be true and complete copies of the certain Order entered in said Court on the first day of May, 1903, nunc pro tunc as of March 19, 1903, and the Mandate filed in said Court on the 19th day of March, 1903, in the cause entitled Pennsylvania Company vs. Harry Donovan, et al, as the same appear from the original record and files of said Court now remaining in my custody and control.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at my office in the city of Chicago, in said District this first day of May, 1903.

[SEAL] MARSHALL E. SAMPSELL
Clerk.

(Endorsed) Filed May 12, 1903. Edward M. Holloway, Clerk.



1 Pleas in the Circuit Court of the United States for the Northern District of Illinois—Northern Division, in Chancery sitting at the United States Circuit Court room in the City of Chicago, in said District and Division, before the Hon. Christian C. Kohlsaat, District Judge of the United States for said Northern District of Illinois, on Friday, the third day of April, in the year of our Lord one thousand nine hundred and three, being one of the days of the regular December term of said court, 1902, and of our Independence the one hundred and twenty seventh year.

MARSHALL E. SAMPSON,
Clerk.

2 Northern District of Illinois— } ss.
Northern Division. }

Pennsylvania Company, A Corporation,
vs.
Harry Donovan, George Callahan, Charles Lewis, M. M. Lee, Joseph Ward, W. H. Ashley, R. L. Taylor, I. Ganthier, I. Vaughn, Sanford McGill, George Baude, J. Baude, A. Reilly; James Casey; Thomas Casey; Edward Devaney, W. Owens, John Kerr, A. Johnson; Tom Quinlan, John Tievens, M. Brady; George Quinlan, George Gustin, John O'Toole, Nicholas Stokes, C. Connell, James Sullivan, Patrick Quinlan, C. Cunningham, J. Vaughn, Peter Taylor, William Simmons, Patrick Regan, James Regan, John J. Casey, M. Crowley, M. Geary, A. Cooke, Charles P. Engle, Eugene Gibbs and John Casey. } 26,191.

3 Be it remembered that
on to-wit: the 19th day of March, 1903, being one of the days of the regular December term of said court, 1902, in the record of proceedings thereof in said entitled cause before the Hon. Christian C. Kohlsaat, District Judge, appears the following entry to-wit:

ORDER OF MARCH 19, 1903.

Pennsylvania Company *vs.* Harry Donovan; George Callahan; Charles Lewis; M. M. Lee; Joseph Ward; W. H. Ashley; R. L. Taylor; I. Ganthier; I. Vaughn; Sanford McGill; George Baude; J. Baude; A. Reilly; James Casey; Thomas Casey; Edward Devaney; W. Owens; John Kerr; A. Johnson; Tom Quinlan; John Tievens; M. Brady; George Quinlan; George Gustin; John O'Toole; Nicholas Stokes; C. Connell; James Sullivan; Patrick Quinlan; C. Cunningham; J. Vaughn; Peter Taylor; William Simmons; Patrick Regan; James Regan; John J. Casey; M. Crowley; M. Geary; A. Cook; Charles P. Engle; Eugene Gibbs; and John Casey.	26191

Now on this day comes the complainant by Loesch Brothers and Howell and E. A. Bancroft, Esquire, its solicitors, and the defendants, Harry Donovan, George Callahan, Charles Lewis, M. M. Lee, Joseph Ward, W. H. Ashley, R. L. Taylor, I. Ganthier, I. Vaughn, Sanford McGill, George Baude, J. Baude, A. Reilly, James Casey, Thomas Casey, Edward Devaney, W. Owens, John Kerr, A. Johnson, Tom Quinlan, John Tievens, M. Brady, George Quinlan, George Gustin, John O'Toole, Nicholas Stokes, C. Connell, James Sullivan, Patrick Quinlan, C. Cunningham, J. Vaughn, Peter Taylor, Wiliam Simmons, Patrick Regan, James Regan, John J. Casey, M. Crowley, M. Geary, A. Cook, Charles P. Engle, Eugene Gibbs and John Casey, by Darrow and Thompson and R. J. Cooney, their solicitors, and this cause having come on to be heard upon the motion of the complainant for a preliminary in-
4 junction in accordance with the bill of complaint and the mandate of the United States Circuit Court of Appeals of the Seventh Circuit affirming the order for a preliminary injunction heretofore entered in said cause on the sixth day of June, A. D. 1902, and the court having heard arguments of counsel and being fully advised in the premises, finds that the complainant is entitled to a preliminary injunction in accordance with the prayer of its

bill and of the mandate of the United States Circuit Court of Appeals of the Seventh Circuit this day filed.

It is therefore ordered, adjudged and decreed that the said defendants Harry Donovan, George Callahan, Charles Lewis, M. M. Lee, Joseph Ward, W. H. Ashley, R. L. Taylor, I. Ganthier, I. Vaughn, Sanford McGill, George Baude, J. Baude, A. Reilly, James Casey, Thomas Casey, Edward Devaney; W. Owens, John Kerr, A. Johnson, Tom Quinlan, John Tievens, M. Brady, George Gustin, John O'Toole, Nicholas Stokes, C. Connell, James Sullivan, Patrick Quinlan, C. Cunningham, J. Vaughn, Peter Taylor, William Simmons, Patrick Regan, James Regan, John J. Casey, M. Crowley, M. Geary, A. Cook, Charles P. Engle, Eugene Gibbs and John Casey and all persons claiming to act under their or each of their authority, direction or control, or to whom notice of this order or injunction shall come, do absolutely desist and refrain from entering the passenger station of complainant at the corner of Adams and Canal street in the City of Chicago to solicit the custom of incoming passengers for cabs, carriages, express wagons or hotels and do absolutely desist and refrain from soliciting the custom of incoming passengers for cabs, carriages, express wagons in said passenger station and do absolutely desist and refrain from congregating upon the sidewalk in front of, adjacent to or about the entrance of complainant's passenger station in Chicago, and from there soliciting the custom of passengers, so as to interfere with the ingress and egress of passengers and employes of the said complainant, until the further order of the court in the premises.

It is hereby stipulated and agreed by and between the parties to the above entitled cause that the foregoing decree shall be taken, considered and entered as final decree in said cause the defendants to pay all costs herein to be taxed by the clerk of this court, said defendants or any of them hereby reserving their right of appeal, writ of error or certiorari to have the said cause reviewed on appeal, writ of error or certiorari by the Supreme Court of the United States.

And on to-wit: the 19th day of March, 1903, there was filed in the clerk's office of said court in the said entitled cause a certain Mandate from the Circuit Court of Appeals for the Seventh Judicial Circuit, which Mandate is not copied here.

7 And on to-wit: the third day of April, 1903, being one of the days of the regular December term of said Court, 1902, in the record of proceedings thereof in said entitled cause before the Hon. Christian C. Kohlsaat, District Judge, appears the following entry to-wit:

8 **DECREE OF APRIL 3, 1903.**

Pennsylvania Company,
vs.
Harry Donavan; George Callahan; Charles Lewis; M. M. Lee; Joseph Ward; W. H. Ashley; R. L. Taylor; I. Ganthier; I. Vaughn; Sanford McGill; George Bande; J. Bande; A. Reilly; James Casey; Thomas Casey; Edward Devaney; W. Owens; John Kerr; A. Johnson; Tom. Quinlan; John Tievans; M. Brady; George Quinlan; George Gustin; John O'Toole; Nicholas Stokes; C. Connell; James Sullivan; Patrick Quinlan; C. Cunningham; J. Vaughn; Peter Taylor; William Simmons; Patrick Regan; James Reagan; John J. Casey; M. Crowley; M. Geary; A. Cook; Charles P. Engle; Eugene Gibbs; and John Casey, } 26191

And now again come the complainant, by Loesch Brothers and Howell and Edgar A. Bancroft, Esquire, its solicitors, and the defendants by R. J. Cooney, Esquire, and Darrow and Thompson, their solicitors, and by agreement of said parties by their solicitors respectively, this cause coming on to be heard for final hearing upon the Bill of Complaint, the Answer thereto and the Replication to said Answer, and the affidavits heretofore filed in this cause by the complainant in support of its Bill and the affidavits filed by the defendants in support of their Answer, and upon the agreement of the compainant and defendants by their respective counsel, that said affidavits shall be taken as all the testimony offered in said cause by both parties hereto, and that this cause be now brought to final hearing upon said pleadings, testimony and agreement of coun-

sel, and the court having heard arguments of counsel, and being fully advised in the premises,

Finds that it has jurisdiction of the parties and of the subject matter to this cause, and that all the material allegations of said Bill of Complaint are true; that the equities of this cause are with the complainant, and that the complainant is entitled to the relief prayed for in its Bill of Complaint and to have the temporary injunction heretofore issued in this cause made permanent; that the defendants, or some of them at the time of the filing of the Bill herein and for some weeks prior thereto did daily enter the Union Passenger Station of complainant for the purpose of soliciting the custom of incoming passengers for cabs, hacks and carriages, and did in said station solicit the custom of such incoming passengers against complainant's protests, and that the defendants at the time of the filing of the Bill herein and for some weeks prior thereto did daily congregate in numbers from eight to twenty at a time upon the sidewalk in front of, adjacent to and about the main entrance of complainant's railway station situate at the corner of Canal and Adams Streets in the City of Chicago against complainant's objections, for the purpose of soliciting, and did there daily solicit the custom of incoming passengers for their cabs, carriages, express wagons and hotels, and thereby did interfere with the ingress and egress of passengers and employes of complainant to and from said station.

It is, therefore, ordered, adjudged and decreed that the said defendants Harry Donovan, George Callahan, Charles Lewis, M. M. Lee, Joseph Ward W. H. Ashley, R. L. Taylor, I. Ganthier, I. Vaughn, Sanford McGill, George Baude, J. Baude, A. Reilly, James Casey, Thomas Casey, Edward Devaney, W. Owens, John Kerr, A. Johnson, Tom Quinlan, John Tievens M. Brady, George Quinlan, George Gustin, John O'Toole, Patrick Quinlan C. Cunningham, I. Vaughn, Peter Taylor, William Simmons, Patrick Regan John Regan, John J. Casey, M. Crowley, M. Geary, A. Cook, Charles P. Engle, Eugene Gibbs and John Casey, and each of them, their agents and servants and all persons claiming to act under their or each of their authority, direction or control, or to whom notice of this decree shall come, be and they are hereby perpetually enjoined from entering the passenger station of complainant at the corner of Adams and Canal Streets, in the City of Chicago, to solicit the custom of incoming passengers for cabs, carriages, express wagons or hotels, and be and they are hereby perpetually enjoined from soliciting the custom of passengers for cabs, carriages, express wagons and hotels in said complainant's

said passenger station, and be and they are hereby further perpetually enjoined from congregating upon the sidewalk in front of, adjacent to or about the main entrance of complainant's said passenger station in Chicago, and from there soliciting the custom of passengers so as to interfere with the ingress and egress of passengers and employes of said complainant.

It is further ordered that the defendants do pay all the costs in this case to be taxed by the Clerk, and that the Clerk issue execution therefor against the said defendants.

Which said decree is entered without prejudice to the rights of defendants, or any of them, to take an appeal therefrom or sue out writ of error or certiorari to have this cause reviewed by the Circuit Court of Appeals in and for the Seventh Circuit, or by the Supreme Court of the United States.

11 And on to-wit: the tenth day of April, 1903, came the defendants in said entitled cause by their solicitor, Mr. Richard J. Cooney, and filed in the clerk's office of said Court their certain Assignment of Errors in words and figures following to-wit:

12 **ASSIGNMENT OF ERRORS.**

United States of America,
Northern District of Illinois,
Northern Division.

IN THE CIRCUIT COURT OF THE UNITED STATES,

In and for the Northern District of Illinois,

Northern Division.

Pennsylvania Company,
Complainant,
vs.
Harr Donovan, George Callahan, Charles Lewis, M. M. Lee, Joseph Ward, W. H. Ashley, R. L. Taylor, I. Ganthier, L. Vaughn, Sanford McGill, George Baude, J. Baude, A. Reilly, James Casey, Thomas Casey, Edward Devaney, W. Owens, John Kerr, A. Johnson, Tom Quinlan, John Tievens, M. Brady, George Quinlan, George Gustin, John O'Toole, Nicholas Stokes, C. Connell, James Sullivan, Patrick Quinlan, C. Cunningham, J. Vaughn, Peter Taylor, William Simmons, Patrick Regan, James Regan, John J. Casey, M. Crowley, M. Geary, A. Cook, Charles P. Engle, Eugene Gibbs and John Casey,
Defendants.

In Equity
Gen'l No. 26191

And now come the above named defendants by Richard J. Cooney and James R. Ward, their attorneys, and having excepted to the orders and decrees of said United States Circuit Court for the Northern District of Illinois, heretofore entered in the above entitled cause, now still except and say, that said orders and decrees and the records and proceedings therein, are manifestly erroneous and are against the just rights and equities of the above named
13 defendants and each of them, and they assign, the following errors:—

The United States Circuit Court for the Northern District of Illinois erred as follows:—

(1st) That the said United States Circuit Court erred in entering the order and decree in the above entitled cause, April 3rd, 1903, directing and adjudging that the above named defendants and all persons claiming to act under their, or each of their authority, direction or control, or to whom notice of said decree shall come, be and they are hereby perpetually enjoined, do absolutely desist and refrain from entering the passenger station of complainant, at the corner of Adams and Canal Streets, in the City of Chicago, to solicit the custom of incoming passengers for cab, carriages, express wagons, or hotels, and do absolutely desist and refrain from soliciting the custom of passengers for cab, carriage, express wagons or hotels, in said passenger station, and do absolutely desist and refrain from congregating upon the sidewalk in front of, adjacent to, or about the entrance of complainant's passenger station, in Chicago, soliciting the custom of passengers, thereby interfering with the ingress and egress of passengers and employees of the said complainant, for the reasons that the bill of complainant upon which said order and decree is based, and the allegations therein are not sufficient to support said decree, and the evidence heard in support of said bill was not sufficient to support said decree and the facts found in said decree are not proved and established by the evidence heard by the court in support thereof, and the said decree is contrary to law and equity.

(2nd) That the said United States Circuit Court erred in entering the said decree and order of April 3rd, 1903, restraining these defendants and each of them as in said decree set forth, for the reasons that these defendants and each of them were en-
14 gaged in carrying passengers and baggage and soliciting passengers and baggage to be carried by them and each of them, in the City of Chicago, as public and common carriers of passengers and baggage, of and from incoming passengers at said station of complainant, in the said City of Chicago, for hire. The said decree thereby directly destroying said business of these defendants as such public and common carriers, and unjustly and unlawfully discriminates against them and each of them and thereby deprives them and each of them of their property and equal rights in law, contrary to the law of the land, and contrary to public policy.

(3rd) The said United States Circuit Court erred in granting and entering the decree of April 3rd, 1903, for the reasons that it gave and granted to the complainant and employees rights and privileges upon and over the sidewalk and public street, belonging

to and in the said City of Chicago, in front of and adjacent to the entrance to the passenger station of the complainant, to the exclusion of the defendants and each of them as citizens of said City and of the State of Illinois, and discriminating against them and each of them as public and common carriers in violation of their rights as such citizens and public and common carriers, in common with the other citizens of the State of Illinois, held by them and vested in them under and by virtue of the ordinances of the City of Chicago, the constitution and laws of the State of Illinois, and the constitution of the United States of America, and thereby discriminates unjustly and unlawfully in favor of the complainant and the employees of the complainant, and those holding contractual relations with the complainant.

(4th) The said United States Circuit Court erred in granting and entering the decree of April 3rd, 1903, in the above entitled
15 cause for the reason that said decree transcends the power and authority vested in said United States Circuit Court, inasmuch as it annuls and renders inoperative the ordinances of the City of Chicago, and the laws of the State of Illinois, lawfully and properly enacted and inforced at said City of Chicago, under and by virtue of which vested legal rights, were given possessed and exercised by these defendants and each of them as citizens of said City of Chicago and State of Illinois, and as public common carriers of passengers and baggage for hire, in said City and unlawfully discriminates in favor of the complainants and against said defendants and each of them, contarary to the law of the land.

(5th) The said United States Circuit Court erred in granting and entering the decree April 3rd, 1903, for the reasons that in and by said decree the said United States Circuit Court protects the complainant in unlawfully making and enforcing arbitrary and unlawful rules and regulations, discriminating against these defendants and each of them as common carriers of passengers and baggage, in said City of Chicago, by which complainant designates what portion of the sidewalk and what portion of the public street belonging to the said City of Chicago, adjacent to its said passenger station, may be occupied by hackmen, cabmen, and expressmen and cabs, carriages and express wagons, respectively, for the purpose of soliciting passengers and baggage to be carried from and to said passenger station, and by whom and by whose property said portions of said sidewalk and street may be so occupied, contrary to the ordinances of the City of Chicago and the laws of the State of Illinois, and the rights of these defendants and each of them, vested by and derived from said ordinances of the City of Chicago

and laws of the State of Illinois, and thereby creates and se-
16 cures to the complainant and those in the employ of the complainant, or sustaining contractual relations to the complainant, an exclusive privilege and monopoly of the carrying of passengers and baggage for hire, from and to said passenger station.

(6th) The said Circuit Court of the United States erred in granting and entering the decree April 3rd, 1903, for the reason that in and by said decree these defendants and each of them are restrained and prohibited for pursuing their avocation and business as common carriers of passengers and baggage to and from said passenger station of the complainant, in the City of Chicago and are deprived of the right of carrying passengers and baggage to and from said station, destined and in transit to and from points wholly within the State of Illinois, and the carrying of passengers and baggage from said station to points wholly within said City of Chicago.

(7th) The said United States Circuit Court erred in granting and entering the decree April 3rd, 1903, for the reasons that the proofs heard by the Court establish and proved matters purely local at said City of Chicago, and did not embrace or establish matters pertaining to or belonging to the business of interstate commerce or the carrying of interstate passengers and baggage, and the exercise of jurisdiction by said United States Circuit Court, in the premises was not warranted or authorized by the laws of Congress or the constitution of the United States, and the said Court was wholly without jurisdiction under the laws of Congress and the constitution of the United States, to grant and enter said decree against these defendants.

17 (8th) The said Circuit Court erred in not dismissing the bill of complaint filed herein upon the final hearing for want of equity.

9th. The said Circuit Court erred in not dismissing the said bill of complaint filed herein for want of jurisdiction, as the complainant has shown no damages to the extent of $2,000 or any other sum to give the said Court jurisdiction of the said subject matter involved in this suit.

10th. The said Circuit Court erred in entering the said decree of April 3rd, 1903, in this suit, as the complainant had an adequate remedy at law.

11th. The Court erred in entering the said decree of April 3rd, 1903, in holding that the complainant has a right to make arbitrary rules, discriminating as to who may occupy stands for hacks and cabs at and within the complainant's depot, as common carriers of passengers and baggage.

12th. The Court erred in its findings in this case both upon
on. the law and the facts, and in its holding that the complainant can give an exclusive privilege to one bus and carriage company in its depot and exclude other hack and expressmen therefrom, thereby creating a monopoly which is in violation of law, equity, and against public policy.

13th. The said Circuit Court erred in its said decree entered April 3rd, 1903, which in effect regulates the business of common carriers in the city of Chicago; which business is regulated by the ordinances of the city of Chicago and under the immediate control and supervision of the police power of the city of Chicago.

14th. The said Circuit Court erred in its decree of April 3rd, 1903, in restraining the use of the sidewalk and street of these defendants, the use and occupancy of the street being under the immediate control and supervision of the City council.

18 In order that the foregoing assignment of errors may be and appear of record, the defendants present the same to the said Circuit Court and pray that such disposition be made thereof as in accordance with the law and statute of the United States in such case made and provided, and pray a reversal of the said decree entered in this Circuit Court and that the bill of complaint filed herein by the complainant be dismissed for want of equity.

Harry Donovan, George Callahan, Charles Lewis, M. M. Lee, Joseph Ward, W. H. Ashley, R. L. Taylor, I. Ganthier, L. Vaughn, Sanford McGill, George Baude, J. Baude, A. Reilly, James Casey, Thomas Casey, Edward Devaney, W. Owens, John Kerr, A. Johnson, Tom Quinlan, John Tievens, M. Brady, George Quinlan, George Gustin, John O'Toole, Nicholas Stokes, C. Connell, James Sullivan, Patrick Quinlan, C. Cunningham, J. Vaughn, Peter Taylor, William Simmons, Patrick Regan, James Regan, John J. Casey, M. Crowley, M. Geary, Charles P. Engle, Eugene Gibbs and John Casey, Defendants.

By Richard J. Cooney
and James R. Ward
Their Solicitors

(Endorsed) Filed April 10, 1903, Marshall E. Sampsell, Clerk.

19 And on to-wit the tenth day of April, 1903, came the defendants in said entitled cause by their solicitor and filed in the clerk's office of said Court in said cause their certain Petition for Appeal in words and figures following to-wit:

20 **PETITION FOR APPEAL.**

United States Circuit Court,

Northern District of Illinois

Northern Division.

Pennsylvania Company, *Complainant,* vs. Harry Donovan, George Callahan, Charles Lewis, M. M. Lee, Joseph Ward, W. H. Ashley, R. L. Taylor, I. Ganthier, L. Vaughn, Sanford McGill, George Baude, J. Baude, A. Reilly, James Casey, Thomas Casey, Edward Devaney, W. Owens, John Kerr, A. Johnson, Tom Quinlan, John Tievens, M. Brady, George Quinlan, George Gustin, John O'Toole, Nicholas Stokes, C. Connell, James Sullivan, Patrick Quinlan, C. Cunningham, J. Vaughn, Peter Taylor, William Simmons, Patrick Regan, James Regan, John J. Casey, M. Crowley, M. Geary, A. Cook, Charles P. Engle, Eugene Gibbs, and John Casey, *Defendants and respondents.*	In Equity. Gen'l No. 26191.

The above named defendants, Harry Donovan, George Callahan, Charles Lewis, M. M. Lee, Joseph Ward, W. H. Ashley, R. L. Taylor, I. Ganthier, I. Vaughn, Sanford McGill, George Baude, J. Baude, A. Reilly, James Casey, Thomas Casey, Edward Devaney, W. Owens, John Kerr, A. Johnson, Tom. Quinlan, John Tievens, M. Brady, George Quinlan, George Gustin, John O'Toole, Nicholas Stokes, C. Connell, James Sullivan, Patrick Quinlan, C. Cunningham, J. Vaughn, Peter Taylor, William Simmons, Patrick Regan, James Regan, John J. Casey, M. Crowley, M. Geary, A. Cook, Charles P. Engle, Eugene Gibbs, and John Casey, conceiving
21 themselves aggrieved by the order of the Court in granting a permanent injunction in said suit, entered on April 3rd, 1903, in the above entitled proceeding, doth hereby appeal from the said

ppeal, 10, order to the United States Circuit Court of Appeals for the Seventh Circuit to be holden in the City of Chicago and State of Illinois, and they pray that this, their appeal, may be allowed; and that a transcript of the record and proceedings and papers upon which the said order was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Seventh Circuit to be holden at Chicago, in the State of Illinois.

RICHARD J. COONEY,
JAMES R. WARD,
of Counsel,
Attorneys for defendants and appellants.

Harry Donovan,	George Callahan,	Charles Lewis
M. M. Lee	Joseph Ward,	W. H. Ashley,
R. L. Taylor,	I. Ganthier,	L. Vaughn,
Sanford McGill,	George Baude,	J. Baude,
A. Reilly,	James Casey,	Thomas Casey,
Edward Devaney,	W. Owens,	John Kerr,
A. Johnson,	Tom Quinlan,	John Tievens,
M. Brady,	George Quinlan,	George Gustin,
John O'Toole,	Nicholas Stokes,	C. Connell,
James Sullivan,	Patrick Quinlan,	C. Cunningham,
J. Vaughn,	Peter Taylor,	William Simmons,
Patrick Regan,	James Regan,	John J. Casey,
M. Crowley,	M. Geary,	A. Cook,
Charles P. Engle,	Eugene Gibbs, and	John Casey.

(Endorsed) Filed April 10, 1903, Marshall E. Sampsell, Clerk.

22 And on the same day to-wit: the tenth day of April, 1903, being one of the days of the regular December term of said Court, 1902, in the record of proceedings thereof in said entitled cause before the Hon. Christian C. Kohlsaat, District Judge, appears the following entry, to-wit:

ORDER OF APRIL 10, 1903, ALLOWING APPEAL.

Pennsylvania Company,
26,191 *vs.*
Harry Donovan, George Callahan, Charles Lewis, M. M. Lee, Joseph Ward, W. H. Ashley, R. L. Taylor, I. Ganthier, L. Vaughn, Sanford McGill, George Baude, J. Baude, A. Reilly, James Casey, Thomas Casey, Edward Devaney, W. Owens, John Kerr, A. Johnson, Tom Quinlan, John Tievens, M. Brady, George Quinlan, George Gustin, John O'Toole, Nicholas Stokes, C. Connell, James Sullivan, Patrick Quinlan, C. Cunningham, J. Vaughn, Peter Taylor, William Simmons, Patrick Regan, James Regan, John J. Casey, M. Crowley, M. Geary, A. Cook, Charles P. Engle, Eugene Gibbs, and John Casey.

Now on this day come again the said defendants by their solicitors and present their petition for appeal to the United States Circuit Court of Appeals for this circuit, together with their assignments of error and bond on appeal in the sum of Three hundred Dollars ($300) in words and figures as follows, to-wit:

23

BOND ON APPEAL.

Know all Men by these Presents, that we, Harry Donovan, George Callahan, Charles Lewis, M. M. Lee, Joseph Ward, W. H. Ashley, R. L. Taylor, I. Ganthier, L. Vaughn, Sanford McGill, George Baude, J. Baude, A. Reilly, James Casey, Thomas Casey, Edward Devaney, W. Owens, John Kerr, A. Johnson, Tom. Quinlan, John Tievens, M. Brady, George Quinlan, George Gustin, John O'Toole, Nicholas Stokes, C. Connell, James Sullivan, Patrick Quinlan, C. Cunningham, J. Vaughn, Peter Taylor, William Simmons, Patrick Regan, James Regan, John J. Casey, M. Crowley, M. Geary, A. Cook, Charles P. Engel, Eugene Gibbs and John Casey, as principals and National Surety Company, a corporation, existing under and created by the laws of the State of New York

and held firmly and bound unto the Pennsylvania Company in the full and just sum of Three Hundred Dollars ($300.00) to be paid to the said Pennsylvania Company, its certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents,

Sealed with our seals and dated this 10th day of April, in the year of our Lord One thousand nine hundred and three.

Whereas lately at a term of the Circuit Court of the United States for the Northern District of Illinois, Northern Division, in a suit depending in the said Court between the said Pennsylvania Company and the above named principals, entitled Harry Donovan et al, an order for a permanent injunction was entered against the said Harry Donovan, George Callahan, Charles Lewis, M. M. Lee, Joseph Ward, W. H. Ashley, R. L. Taylor, I. Ganthier, L. Vaughn, Sanford McGill, George Baude, J. Baude, A. Reilly, James Casey,
Thomas Casey, Edward Devaney, W. Owens, John Kerr, A.
24 Johnson, Tom. Quinlan, John Tievens, M. Brady, George
Quinlan, George Gustin, John O'Toole, Nicholas Stokes, C. Connell, James Sullivan, Patrick Quinlan, C. Cunningham, J. Vaughn, Peter Taylor, William Simmons, Patrick Regan, James Regan, John J. Casey, M. Crowley, M. Geary, A. Cook, Charles P. Engel, Eugene Gibbs and John Casey, and the said Harry Donovan, George Callahan, Charles Lewis, M. M. Lee, Joseph Ward, W. H. Ashley, R. L. Taylor, I. Ganthier, L. Vaughn, Sanford McGill, George Baude, J. Baude, A. Reilly, James Casey, Thomas Casey, Edward Devaney, W. Owens, John Kerr, A. Johnson, Tom Quinlan, John Tievens, M. Brady, George Quinlan, George Gustin, John O'Toole, Nicholas Stokes, C. Connell, James Sullivan, Patrick Quinlan, C. Cunningham, J. Vaughn, Peter Taylor, William Simmons, Patrick Regan, James Regan, John J. Casey, M. Crowley, M. Geary, A. Cook, Charles P. Engel, Eugene Gibbs, and John Casey, having obtained an appeal to reverse the said order granting a permanent injunction in the aforesaid suit, and a citation directed to the said Pennsylvania Company, citing and admonishing it to be and appear at a United States Circuit Court of Appeals for the Seventh Circuit, to be holden at Chicago within thirty days from the date hereof.

Now, the condition of the above obligation is such, that if the said Harry Donovan, George Callahan, Charles Lewis, M. M. Lee, Joseph Ward, W. H. Ashley, R. L. Taylor, I. Ganthier, L. Vaughn, Sanford McGill, George Baude, J. Baude, A. Reilly, James Casey, Thomas Casey, Edward Devaney, W. Owens, John Kerr, A. John-

son, Tom. Quinlan, John Tievens, M. Brady, George Quinlan, George Gustin, John O'Toole, Nicholas Stokes, C. Connell, James Sullivan, Patrick Quinlan, C. Cunningham, J. Vaughn, Peter Taylor, William Simmons, Patrick Regan, James Regan, John J. Casey, M. Crowley, M. Geary, A. Cook, Charles P. Engel, Eugene Gibbs and John Casey, shall prosecute their appeal to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void else to remain in full force and virtue.

HARRY DONOVAN	SEAL	GEORGE CALLAHAN	SEAL
CHARLES LEWIS	SEAL	M. M. LEE	SEAL
JOSEPH WARD	SEAL	W. H. ASHLEY	SEAL
R. L. TAYLOR	SEAL	I. GANTHIER	SEAL
I. VAUGHN	SEAL	SANFORD MCGILL	SEAL
GEORGE BAUDE	SEAL	J. BAUDE	SEAL
A. REILLY	SEAL	JAMES CASEY	SEAL
THOMAS CASEY	SEAL	EDWARD DEVANEY	SEAL
W. OWENS	SEAL	JOHN KERR	SEAL
A. JOHNSON	SEAL	TOM QUINLAN	SEAL
JOHN TIEVENS	SEAL	M. BRADY	SEAL
GEORGE QUINLAN	SEAL	GEORGE GUSTIN	SEAL
JOHN O'TOOLE	SEAL	NICHOLAS STOKES	SEAL
C. CONNELL	SEAL	JAMES SULLIVAN	SEAL
PATRICK QUINLAN	SEAL	C. CUNNINGHAM	SEAL
J. VAUGHN	SEAL	PETER TAYLOR	SEAL
WILLIAM SIMMONS	SEAL	PATRICK REGAN	SEAL
JAMES REGAN	SEAL	JOHN J. CASEY	SEAL
M. CROWLEY	SEAL	M. GEARY	SEAL
A. COOK	SEAL	CHARLES P. ENGLE	SEAL
EUGENE GIBBS	SEAL	JOHN CASEY	SEAL
.....	SEAL	.....	SEAL

[SEAL] NATIONAL SURETY COMPANY
ARTHUR J. ANDREWS, [SEAL]
Resident Vice-President.
HENRY L. AYRES,
Resident Assistant Secretary.

Witness to signatures,
RICHARD J. COONEY.
Approved: KOHLSAAT, *Judge.*
O. K. .....
H. S. S. *Dep. Clerk.*

(Endorsed) Filed April 10, 1903, Marshall E. Sampsell, Clerk.

26 And it appearing that the defendants have fully complied with the rules of the Circuit Court of Appeals and of this Court,

It is Ordered that said appeal be allowed, and that a citation issue returnable in thirty days from this date.

27 And on the same day, to-wit: the tenth day of April, 1903, there was filed in the clerk's office of said court in said entitled cause a certain Bond on Appeal which is set out in full in order allowing Appeal and not copied here.

28 And on the same day to-wit: the 10th day of April, 1903, there was filed in the clerk's office of said Court in said entitled cause a certain stipulation in words and figures following to-wit:

United States of America,
Northern District of Illinois,
Northern Division.

IN THE CIRCUIT COURT OF THE UNITED STATES,

In and for the Northern District of Illinois,

Northern Division.

Pennsylvania Company,
Complainant,
—*vs.*—
Harry Donovan *et al*
Defendants.

In Equity. Gen'l No. 26191.

It is stipulated by and between the complainant and the defendants in the above entitled cause that the transcript of record in this cause used in said cause in the United States Circuit Court of Appeals, in and for the Seventh Circuit, at the October Term, 1902, of said Court, No. 917, together with this supplemental record shall

be taken as the record of this cause for appeal and other proceedings whenever necessity may require. Supp Ap

Apl. 10, 1903.

LOESCH BROS. & HOWELL,
& E. A. BANCROFT,
Solicitors for Complainant.

.....

.....

RICHARD J. COONEY and
JAMES R. WARD,
Attorneys for Defendants.

(Endorsed) Filed April 10, 1903. Marshall E. Sampsell, Clerk.

19 And on to-wit: the 10th day of April, 1903, there was filed in the clerk's office of said court in said entitled cause a certain praecipe for record in words and figures following to-wit: Praec arip 10,

PRAECIPE FOR TRANSCRIPT OF RECORD.

UNITED STATES CIRCUIT COURT,
Northern District of Illinois,
Northern Division.

Pennsylvania Company
—*vs*—
Harry Donovan, *et al.*
} In Equity. Gen. No.—26191.

The clerk of the said court will make up an authenticated transcript of record in the above entitled cause commencing where the record terminated in this cause as prepared for appeal from the temporary order of injunction entered in said cause, the United States Circuit Court of Appeals, including the orders of the court, and

First. The decree entered in the said cause April 3rd, 1903, and the temporary decree entered under the mandate of the Circuit Court of Appeals prior to this decree.

Second. The assignment vb 2it66 (illes m m mahah

Third. Petition of appeal.

Fourth. Appeal Bond. Order Allowing Appeal.

Fifth. Stipulation.

RICHARD J. COONEY and
JAMES R. WARD,
Attorneys for Defendants.

(Endorsed) Filed April 10, 1903, Marshall E. Sampsell, Clerk.

Clerk. 30 Northern District of Illinois }
Northern Division, } ss.

I, Marshall E. Sampsell, Clerk of the Circuit Court of the United States for said Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the proceedings had of record in said Court and made in accordance with Stipulation and Praecipe filed in the cause entitled:

Pennsylvania Company, A Corporation,
vs.
Harry Donovan, George Callahan, Charles Lewis, M. M. Lee, Joseph Ward, W. H. Ashley, R. L. Taylor, I. Ganthier, L. Vaughn, Sanford McGill, George Baude, J. Baude, A. Reilly, James Casey, Thomas Casey, Edward Devaney, W. Owens, John Kerr, A. Johnson, Tom Quinlan, John Tievens, M. Brady, George Quinlan, George Gustin, John O'Toole, Nicholas Stokes, C. Connell, James Sullivan, Patrick Quinlan, C. Cunningham, J. Vaughn, Peter Taylor, William Simmons Patrick Regan, James Regan, John J. Casey, M. Crowley, M. Geary, A. Cook, Charles P. Engle, Eugene Gibbs, and John Casey, } 26,191.

as the same appears from the original records and files of said Court now remaining in my custody and control.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at my office in the City of Chicago, in said District, this 14th day of April, 1903.

MARSHALL E. SAMPSELL,
Clerk.

[SEAL]

31 United States of America. } ss.

The President of the United States, To Pennsylvania Company, A Corporation, Greeting: Citatio Apri

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals, for the Seventh Circuit, to be holden at Chicago, within thirty days from the date hereof, pursuant to an order allowing an appeal, filed in the Clerk's Office of the Circuit Court of the United States for the Northern District of Illinois, Northern Division, wherein Harry Donovan, et al are Appellants and you are Appellee to show cause, if any there be, why the Decree rendered against the said Appellants should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Christian C. Kohlsaat, Judge of the District Court of the United States, this Tenth day of April, in the year of our Lord one thousand nine hundred and three.

KOHLSAAT,

J

Received a copy of the above citation this 10th day of April, 1903.

FRANK J. LOESCH,
Counsel for Pennsylvania Company
E. A. BANCROFT,
Of Counsel.

(Endorsed) Circuit Court of the United States, Northern District of Illinois, Northern Division. Filed Apr 11 1903 Marshall E. Sampsell, Clerk.

In the

United States Circuit Court of Appeals

For the Seventh Circuit

October Term, A D 1902.

No. 987.

Harry Donovan, George Callahan, Charles Lewis, M. M. Lee, Joseph Ward, W. H. Ashley, R. L. Taylor, I. Ganthier, I Vaughn, *et al.*,

Appellants,

vs.

Pennsylvania Company,

Appellee.

Now comes the Appellants by Richard R. Cooney and James R. Ward, their solicitors, and moves the court that the certified transcript of record, as certified by the clerk of the United States Circuit Court in and for this district, be made a part of the printed record in this cause, and that leave be granted the clerk of this court in making up the printed record in this cause may use the printed copies of the transcript of record in cause No. 917, Harry Donovan et al vs. Pennsylvania Company, tried at the October session of this court A. D. 1902, in completing the transcript of record in this cause in this court.

Appellants further move the court, that the appellants and appellees be permitted to refile their briefs and arguments in this cause, which were used in the cause No. 917, Harry Donovan et al, versus the Pennsylvania Co. heard at the Oct. session of this court, 1901

Appellants further move, that this cause be placed upon the calender of this court at this session of this court and that the same be set for a hearing at this session of the court by the court.

Appellants dismiss their ninth assignment of error.

Appellees concur in this motion of appellants and concur in their requests.

Richard J. Cooney and
James R. Ward
Solicitors for Appellants.
F. J. Loesch
E. A. Bancroft and
C. F. Loesch
Solicitors for Appellee

(Endorsed) Filed May 12, 1903. Edward M. Holloway, Clerk.

Tuesday, May 12, 1903.

Court met pursuant to adjournment.
Present:
Hon. James G. Jenkins, Circuit Judge presiding.
Hon. Peter S. Grosscup, Circuit Judge.
Hon. Francis E. Baker, Circuit Judge.

Harry Donavanm George Callaghan, Charles Lewis, *et al.*	}	Appeal from the Circuit Court of the United States for the Northern District of Illinois Northern Division.
987 *vs*		
Pennsylvania Company		

Now this day come the appellants by their counsel Mr. R. J. Cooney and present their motion which is in the following words and figures to-wit:

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

October Term, A. D. 1902.

No. 987.

Harry Donovan, George Callahan, Charles Lewis, M. M. Lee, Joseph Ward, W. H. Ashley, R. L. Taylor, I. Ganthier, I. Vaughn, *et al.*,
Appellants,

vs.

Pennsylvania Company,
Appellee.

Now comes the Appellants by Richard R. Cooney and James R. Ward, their solicitors, and moves the court that the certified transcript of record, as certified by the clerk of the United States Circuit Court in and for this district, be made a part of the printed record in this cause, and that leave be granted the clerk of this court in making up the printed record in this cause may use the printed copies of the transcript of record in cause No. 917, Harry Donovan et al vs. Pennsylvania Company, tried at the October session of this court A. D. 1902, in completing the transcript of record in this cause in this court.

Appellants further move the court, that the appellants and appellees be permitted to refile their briefs and arguments in this cause, which were used in the cause No. 917, Harry Donovan et al, versus the Pennsylvania Co. heard at the Oct. session of this court, 1901.

Appellants further move, that this cause be placed upon the calander of this court at this session of this court and that the same be set for a hearing at this session of the court by the court.

Appellants dismiss their ninth assignment of error.

Appellees concur in this motion of appellants and concur in their requests.

RICHARD J. COONEY and
JAMES R. WARD
Solicitors for Appellants.
F. J. LOESCH
E. A. BANCROFT and
C. F. LOESCH
Solicitors for Appellee

(Endorsed) Filed May 12, 1903. Edward M. Holloway, Clerk.

And the court having heard the same on oral argument by Mr. R. J. Rooney, counsel for appellants in support of motion, Mr. F. J. Loesch, counsel for appellee present and consenting thereto, it is ordered that the said motion be, and the same is hereby granted and it is further ordered that the additional transcript of the record filed May 12, 1903, be, and the same is hereby made a part of the record in this cause in this court.

Pennsylvania Company,
vs.
Harry Donovan, *et al.*
} 26191.

Be it remembered that on this day to-wit: the 3rd day of April, 1903, there was filed in the clerk's office of said Court in said entitled cause a certain stipulation in the words and figures following to-wit:

STIPULATION.

Stipula
Apri

CIRCUIT COURT OF THE UNITED STATES,

Northern District of Illinois-Northern Division.

Pennsylvania Company,
vs.
Harry Donovan, George Callahan, Charles Lewis, M. M. Lee, Joseph Ward, W. H. Ashley, R. L. Taylor, I. Ganthier, L. Vaughn, Sanford McGill, George Baude, J. Baude, A. Reilly, James Casey, Thomas Casey, Edward Devaney, W. Owens, John Kerr, A. Johnson, Tom Quinlan, John Tievens, M. Brady, George Quinlan, George Gustin, John O'Toole, Nicholas Stokes, C. Connell, James Sullivan, Patrick Quinlan, C. Cunningham, J. Vaughn, Peter Taylor, William Simmons, Patrick Regan, James Regan, John J. Casey, M. Crowley, M. Geary, A. Cook, Charles P. Engle, Eugene Gibbs, and John Casey,

It is hereby stipulated and agreed by and between the parties to the above entitled cause that the following paragraphs appearing in the order entered of record in the above entitled cause on the nineteenth day of March, A. D. 1903, to-wit:

"It is hereby stipulated and agreed by and between the parties to the above entitled cause that the foregoing decree shall be taken,

considered and entered as the final decree in said cause; the defendants to pay all costs herein to be taxed by the clerk of this court.

Said defendants, or any of them, hereby reserving their right of appeal, writ of error or certiorari to have the said cause reviewed on appeal, writ of error or certiorari by the Supreme Court of the United States."

be and the same are hereby vacated and expunged and in lieu thereof, the parties to the above entitled cause hereby stipulate and agree that the decree hereto attached shall be entered as the final decree in the above entitled cause.

Dated this second day of April, A. D. 1903.

LOESCH BROS., & HOWELL, &
E. A. BANCROFT,
Solicitors for Complainant.
RICHARD J. COONEY,
DARROW & THOMPSON,
Solicitors for defendants.

(Endorsed) Filed April 3, 1903, Marshall E. Sampsell, Clerk.

Northern District of Illinois, } ss.
Northern Division, }

I. Marshall E. Sampsell, clerk of the Circuit Court of the United States for said Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete copy of the certain stipulation filed in said Court on the third day of April, 1903, in the cause entitled Pennsylvania Company vs. Harry Donovan, et al, General Number 26,191, as the same appears from the original thereof now remaining in my custody and control.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at my office in the city of Chicago, in said district this 24th day of April, 1903.

[SEAL]

MARSHALL E. SAMPSELL,
Clerk.

(Endorsed) Filed Apr 24 1903, Edward M. Holloway, Clerk.

Wednesday, May 13, 1903.

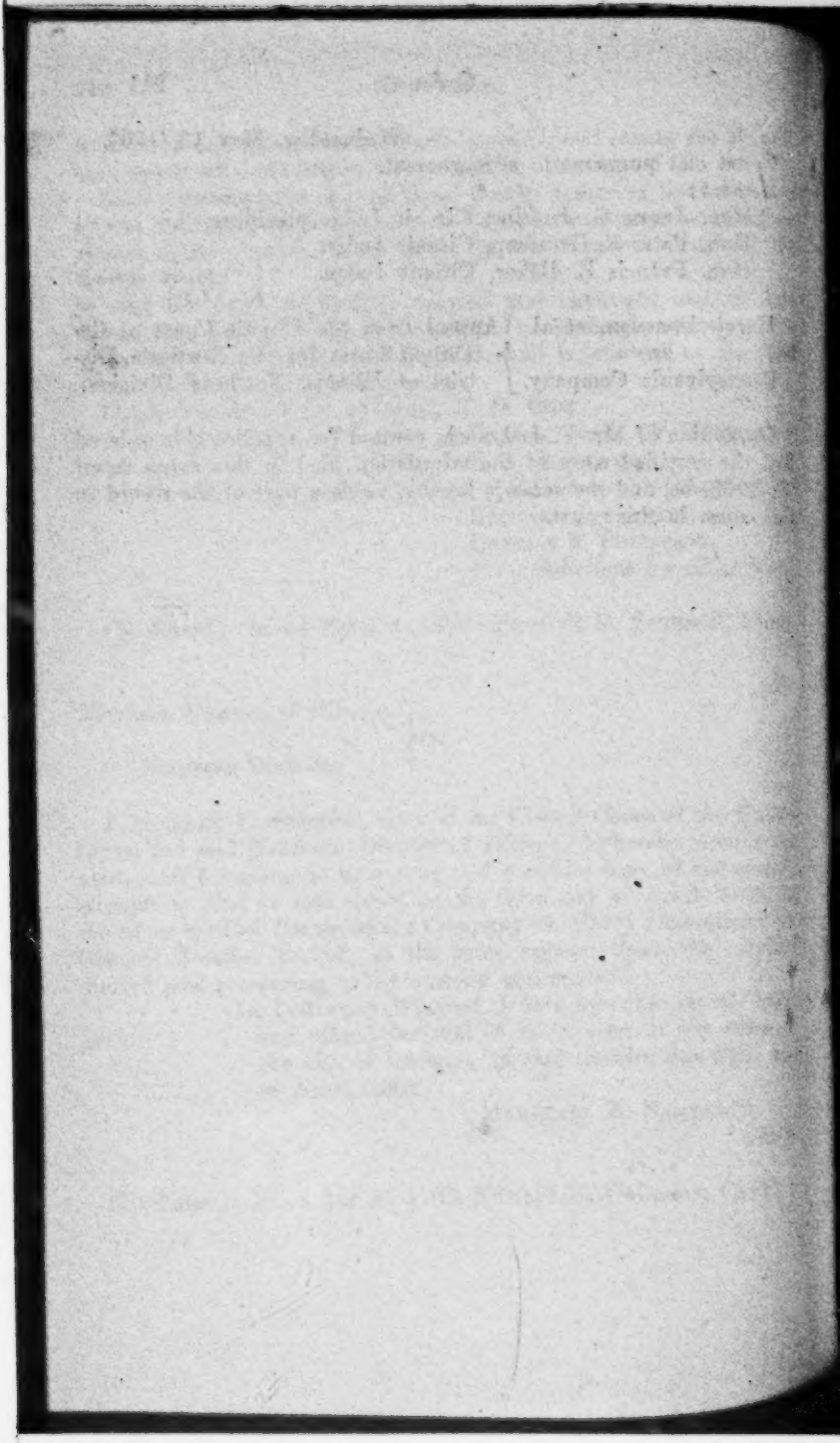
Court met pursuant to adjournment.

Present:

Hon. James G. Jenkins, Circuit Judge presiding.
Hon. Peter S. Grosscup, Circuit Judge.
Hon. Francis E. Baker, Circuit Judge.

Harry Donovan, *et al.*	}	Appeal from the Circuit Court of the
987 *vs.*		United States for the Northern Dis-
Pennsylvania Company.	}	trict of Illinois, Northern Division.

On motion of Mr. F. J. Loesch, counsel for appellee it is ordered that the certified copy of the stipulation filed in this cause April 22, 1903, be, and the same is hereby, made a part of the record in this cause in this court.



UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

I, Edward M. Holloway, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages numbered from 1 to 211, inclusive, is a copy of the printed record filed in this court on April 22, 1903, which was prepared for the printer, indexed, supervised and distributed by me in accordance with the rules of this court, and upon which the cause was determined by the United States Circuit Court of Appeals for the Seventh Circuit in cause No. 987, Harry Donovan *et al. vs.* Pennsylvania Company.

In Testimony whereof I hereunto subscribe my name, and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this eighteenth day of June, A. D. 1903.

[SEAL.]

EDWARD M. HOLLOWAY,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit, begun and held at the United States Court Rooms in the City of Chicago in said Seventh Circuit, on the seventh day of October, 1902, of the October term in the year of our Lord one thousand nine hundred and two, and of our independence the one hundred and twenty-seventh year.

And afterwards, to wit: on the fourteenth day of April, 1903, in the October term last aforesaid, came the appellants, by their counsel Mr. Richard J. Cooney and Mr. James R. Ward, and filed in the office of the clerk of this court their appearance, which appearance is in the words and figures following, to wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

No. 987 October Term, 1902.

Harry Donovan, *et al.*
vs.
Pennsylvania Company.

The clerk will enter my appearance as counsel for the appellants.

RICHARD J. COONEY and
JAMES R. WARD.

(Endorsed) Filed April 14, 1903. Edward M. Holloway, Clerk.

And afterwards, to wit: on the twenty-fourth day of April, 1903, in the October term last aforesaid, there was filed in the office of the clerk of this court a certified copy of stipulation filed in the office of the clerk of the Circuit Court of the United States for the Northern District of Illinois, Northern Division, on the third day of April, 1903.

(Stipulation not copied. See p. 209 printed record.)

And afterwards, to wit: on the thirtieth day of April, 1903, in the October term last aforesaid, there was filed in the office of the clerk of this court a certain stipulation of counsel, in the words and figures following, to wit:

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

April Term, A. D., 1903.

No. 987.

Harry Donovan, George Callahan, Charles Lewis, M. M. Lee, Joseph Ward, W. H. Ashley, R. L. Taylor, I. Ganthier, I. Vaughn, *et al.*,

Appellants,

Pennsylvania Company,

Appellee.

It is stipulated by and between counsel, representing appellants and appellee in the above entitled cause, that this cause be docketed for hearing, and heard at this session of this court, and that the same be set for a hearing by the court.

It is further stipulated that the affidavits upon which the decree of April 3, 1903, was entered, are the affidavits set out in the transcript of record in the above entitled cause in this court at the October session 1902; the number of the cause in this court being 917 with this record and the supplemental or additional record filed herewith constitute with this stipulation a complete record of said cause.

Further that stipulation in decree of April 3, 1903, omitted from transcript of record be printed and inserted in same by the clerk of this court, and that the ninth assignment of error is hereby dismissed by appellants.

RICHARD J. COONEY,
JAMES R. WARD,
Solicitor for Appellants.
FRANK J. LOESCH,
EDGAR A. BANCROFT and
CHARLES F. LOESCH,
Counsel for Appellee.

(Endorsed) Filed Apr. 30, 1903. Edward M. Holloway, Clerk.

And afterwards, to wit: on the twelfth day of May, 1903, in the October term last aforesaid, the following further proceedings were had and entered of record, to wit:

TUESDAY, May 12, 1903.

Court met pursuant to adjournment.

Present:

Hon. James G. Jenkins, Circuit Judge presiding.
Hon. Peter S. Grosscup, Circuit Judge.
Hon. Francis E. Baker, Circuit Judge.

987	Harry Donovan *et al.* *vs.* Pennsylvania Company.	Appeal from the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

Upon motion of Mr. Richard J. Cooney, counsel for appellant, it is ordered that the additional transcript of the record filed this day be, and the same is hereby, made a part of the record in this cause in this court, and it is further ordered that in lieu of printing the same the printed copies now on file in cause No. 917, Harry Donovan, *et al.*, *vs.* Pennsylvania Company, may be withdrawn from the files of said cause, and may be used in making up the printed records in this cause.

987	Harry Donovan *et al.* *vs.* Pennsylvania Company.	Appeal from the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

It is ordered by the court that this cause be placed on the calendar of this session, and set down for hearing Wednesday, May 13, 1903.

And afterwards, to wit: on the thirteenth day of May, 1903, in the October term last aforesaid, the following further proceedings were had and entered or record, to wit:

WEDNESDAY, May 13, 1903.

Court met pursuant to adjournment.
Present:
Hon. James G. Jenkins, Circuit Judge, presiding.
Hon. Peter S. Grosscup, Circuit Judge.
Hon. Francis E. Baker, Circuit Judge.

987	Harry Donovan *et al.* *vs.* Pennsylvania Company.	Appeal from the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

Now this day come the parties by their counsel, and this cause now comes on to be heard on oral argument by Mr. Richard J. Cooney, counsel for appellant, and by Mr. F. J. Loesch, counsel for appellee, and the court having heard the same, takes this matter under advisement.

987	Harry Donovan *et al.* *vs.* Pennsylvania Company.	Appeal from the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

Upon motion of Mr. F. J. Loesch, counsel for appellee, it is ordered that the certified copy of the stipulation filed in this court April 24, 1903, be, and the same is hereby made a part of the record in this cause in this court.

And afterwards, on the same day, to wit: on the thirteenth day of May, 1903, in the October term last aforesaid, the following further proceedings were had and entered of record, to wit:

WEDNESDAY, May 13, 1903.

Court met pursuant to adjournment.

Present:

Hon. James G. Jenkins, Circuit Judge presiding.
Hon. Peter S. Grosscup, Circuit Judge.
Hon. Francis E. Baker, Circuit Judge.

Harry Donovan, M. M. Lee, R. S. Taylor, Sanford Mc Gill, A. Reilly, Edward Vaney, A. Johnson, M. Brady, John O'Toole, James Sullivan, J. Vaughn, Patrick Regan, M. Crowley, Charles P. Engle, George Callahan, Joseph Ward, I. Ganthier, George Baude, James Casey, W. Owens, Tom Quinlan, George Quinlan, Nicholas Stokes, Patrick Quinlan, Peter Taylor, James Regan, M. Geary, Eugene Gibbs, Charles Lewis, W. H. Ashley, L. Vaughn, J. Baude, Thomas Casey, John Kerr, John Tievens, George Gustin, C. Connell, C. Cunningham, William Simmons, John J. Casey, A. Cook and John Casey,

987 *vs.*

Pennsylvania Company.

Appeal from the Circuit Court of the United States for the Northern District of Illinois Northern Division.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Northern District of Illinois, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this court, that the decree of the said Circuit Court in this cause be, and the same is hereby, affirmed with costs.

And afterwards, to wit: on the fifteenth day of May, 1903, in the October term last aforesaid, came the appellants, by their counsel Mr. Richard J. Cooney and Mr. James R. Ward, and filed in the office of the clerk of this court a motion for stay of mandate, in the words and figures following, to wit:

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

October Term, A. D. 1903.

Harry Donovan *et al.* *vs.* Pennsylvania Company.	Appeal from the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

Now comes the appellants in the above entitled cause by their solicitors, Richard J. Cooney and James R. Ward, and moves this Honorable Court, that the mandate in the above entitled cause from this court to the Circuit Court be stayed for ninety days.

RICHARD J. COONEY, and
JAMES R. WARD,
Solicitors for Appellants.

Received notice of above motion this 14th day of May, 1903.

F. J. LOESCH and
E. A. BANCROFT,
Counsel for Appellee.

Until further order of court.
JENKINS, J.

(Endorsed) Filed May 15, 1903. Edward M. Holloway, Clerk.

And afterwards, to wit, on the same day, to wit: on the fifteenth day of May, 1903, in the October term last aforesaid, the following further proceedings were had and entered of record, to wit:

FRIDAY, May 15, 1903.

Court met pursuant to adjournment.

Present:

Hon. James G. Jenkins, Circuit Judge presiding.
Hon. Peter S. Grosscup, Circuit Judge.
Hon. Francis E. Baker, Circuit Judge.

	Harry Donovan *et al.*	Appeal from the Circuit Court of the United States for the Northern District of Illinois, Northern Division.
987	*vs.*	
	Pennsylvania Company.	

Upon motion of Mr. R. J. Cooney, counsel for appellants, it is ordered that the mandate in this cause be stayed until further order of court.

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

I, Edward M. Holloway, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing typewritten pages, numbered from 1 to 8, inclusive, contain a true copy of the papers filed (except briefs of counsel), and proceeding had thereon, in the United States Circuit Court of Appeals for the Seventh Circuit, in the case of

Harry Donovan *et al.*
vs.
Pennsylvania Company.

No. 987, October Term, 1902, as the same remains upon the files and records of the United States Circuit Court of Appeals, for the Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this eighteenth day of June A. D. 1903.

[SEAL.]

EDWARD M. HOLLOWAY,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

Copy.

In the United States Circuit Court of Appeals for the Seventh Circuit.

HARRY DONOVAN ET AL., Appellants,
vs.
PENNSYLVANIA COMPANY, Appellees. } No. 987.

It is stipulated by and between the parties by their counsel to the above entitled suit of Donovan, *et al.*, vs. Pennsylvania Company, No. 417, now pending in the Supreme Court of the United States at the October term A. D., 1903, that the transcript of the record of the said suit now on file in the above entitled suit in the Supreme Court of the United States may be taken as a return to the writ of certiorari issued by the said Supreme Court of the United States October 20, A. D. 1903, and directed to the honorable judges of the United States circuit court of appeals for the seventh circuit.

RICHARD J. COONEY AND
JAMES R. WARD,
Attorneys for Appellants and Petitioners.
FRANK J. LOESCH,
EDGAR A. BANCROFT,
CHARLES F. LOESCH,
Counsel for Appellees.

Endorsed: Filed Nov. 2, 1903. Edward M. Holloway, clerk.

UNITED STATES OF AMERICA, ss:

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the honorable the judges of the United States circuit court of appeals for the seventh circuit, Greeting:

Being informed that there is now pending before you a suit in which Harry Donovan, George Callahan, Charles Lewis *et al.*, are appellants, and Pennsylvania Company is appellee, No. 987, which suit was removed into the said circuit court of appeals by virtue of an appeal from the circuit court of the United States for the northern district of Illinois, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said circuit court of appeals and removed into the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 20th day of October, in the year of our Lord one thousand nine hundred and three.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

[Endorsed:] File No. 19,068. Supreme Court of the United States. No. 417, October term, 1903. Harry Donovan *et al.*, vs. Pennsylvania Company. Writ of certiorari. Filed Nov. 2 1903. Edward M. Holloway, clerk.

UNITED STATES OF AMERICA, *Seventh Circuit,* } ss:

In obedience to the command of the foregoing writ of certiorari and in pursuance of the stipulation of the parties, a full and true copy of which is hereto attached, I do hereby certify and return that the transcript of the record filed with the application to the Supreme Court of the United States for a writ of certiorari in the case of Harry Donovan, *et al.*, appellants, and Pennsylvania Company, appellee, is a full, true and complete transcript of the record upon which said cause was heard in the United States circuit court of appeals for the seventh circuit, together with all proceedings in said court.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States circuit court of appeals for the seventh circuit, at the city of Chicago, this second day of November, A. D., 1903.

[Seal United States Circuit Court of Appeals, Seventh Circuit.]

EDWARD M. HOLLOWAY,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

[Endorsed:] File No. 19,068. Supreme Court U.S., October term, 1903. Term No. 417. Harry Donovan *et al.*, petitioners, vs. Pennsylvania Co. Writ of certiorari and return. Filed Nov. 4, 1903.

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Office Supreme Court U. S.
FILED
SEP 16 1903
JAMES H. McKENNEY,
Clerk.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1903.

HARRY DONOVAN, GEORGE CALLAHAN, CHARLES LEWIS, M. M. LEE, JOSEPH WARD, W. H. ASHLEY, R. L. TAYLOR, I. GANTHIER, L. VAUGHN, SANFORD McGILL, GEORGE BAUDE, J. BAUDE, A. REILLY, JAMES CASEY, THOMAS CASEY, EDWARD DEVANEY, W. OWENS, JOHN KERR, A. JOHNSON, TOM QUINLAN, JOHN TIEVENS, M. BRADY, GEORGE QUINLAN, GEORGE GUSTIN, JOHN O'TOOLE, NICHOLAS STOKES, C. CONNELL, JAMES SULLIVAN, PATRICK QUINLAN, C. CUNNINGHAM, J. VAUGHN, PETER TAYLOR, WILLIAM SIMMONS, PATRICK REGAN, JAMES REGAN, JOHN J. CASEY, M. CROWLEY, M. GEARY, A. COOK, CHARLES P. ENGLE, EUGENE GIBBS AND JOHN CASEY, *Petitioners,*

vs.

THE PENNSYLVANIA COMPANY, *Respondent.*

Petition for Writ of Certiorari.

PETITION.

MR. RICHARD J. COONEY,
MR. JAMES R. WARD,
Counsel for Petitioners.

BARNARD & MILLER PRINT, CHICAGO.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1902.

HARRY DONOVAN, GEORGE CALLAHAN, CHARLES LEWIS, M. M. LEE, JOSEPH WARD, W. H. ASHLEY, R. L. TAYLOR, I. GANTHIER, L. VAUGHN, SANFORD MCGILL, GEORGE BAUDE, J. BAUDE, A. REILLY, JAMES CASEY, THOMAS CASEY, EDWARD DEVANEY, W. OWENS, JOHN KERR, A. JOHNSON, TOM QUINLAN, JOHN TIEVENS, M. BRADY, GEORGE QUINLAN, GEORGE GUSTIN, JOHN O'TOOLE, NICHOLAS STOKES, C. CONNELL, JAMES SULLIVAN, PATRICK QUINLAN, C. CUNNINGHAM, J. VAUGHN, PETER TAYLOR, WILLIAM SIMMONS, PATRICK REGAN, JAMES REGAN, JOHN J. CASEY, M. CROWLEY, M. GEARY, A. COOK, CHARLES P. ENGLE, EUGENE GIBBS and JOHN CASEY, *Petitioners,*

vs.

PENNSYLVANIA COMPANY, *Respondent.*

Petition for Writ of Certiorari.

PETITION.

To the Honorable Supreme Court of the United States:

Your Petitioners, Harry Donovan, George Callahan, Charles Lewis, M. M. Lee, Joseph Ward, W. H. Ashley, R. L. Taylor, I. Ganthier, L. Vaughn, Sanford McGill, George Baude, J. Baude, A. Reilly, James Casey, Thomas Casey, Edward Devaney, W. Owens, John Kerr, A. Johnson, Tom. Quinlan, John Tievens, M. Brady, George Quinlan, George Gustin, John O'Toole, Nicholas

Stokes, C. Connell, James Sullivan, Patrick Quinlan, C. Cunningham, J. Vaughn, Peter Taylor, William Simmons, Patrick Regan, James Regan, John J. Casey, M. Crowley, M. Geary, A. Cook, Charles P. Engle, Eugene Gibbs and John Casey, respectfully, represent that the respondent, the Pennsylvania Company, filed its bill of complaint in the Circuit Court of the United States, for the Northern District of Illinois, Northern Division, February 27, 1902, against your Petitioners, in which bill of complaint respondent alleged and charged:

BILL OF COMPLAINT.

First. That it was a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania and a citizen of said state, and had its principal office in the City of Philadelphia, Pennsylvania; was not a citizen of the State of Illinois; that petitioners were citizens of the State of Illinois and residents in the Northern District, Northern Division.

Second. That the matters in dispute exceeded, exclusive of interest and costs, the sum or value of two thousand dollars ($2,000), and arose under the constitution and laws of the United States.

Third. That it was incorporated April 7, 1870, under an act of the legislature of the State of Pennsylvania, for the purpose of constructing, maintaining and managing railroads and any other public works which might tend to improve or develop the transportation or conveyance of freight, passengers or other traffic, by land or water, through or to any part of the United States or the territories thereof, with the right to purchase, hold and enjoy lands, tenements, leasehold estates and goods and chattels of whatsoever kind and quality necessary, to erect depots,

engine houses, tracks, and other purposes, for the well being of said corporation and the management of its business.

Fourth. That in April, 1871, it acquired a lease for the term of nine hundred and ninety-one (991) years, from July 1, 1869, and the possession and control of certain lines of railway from the City of Chicago, Illinois, to Pittsburg, Pennsylvania, and other points, by virtue of which it assumed the obligation of operating and maintaining said railway lines for the remainder of the term of said lease, from its passenger station, at or near the corner of Canal and Adams streets, in the City of Chicago, Illinois, through said city and state to the City of Pittsburg, Pennsylvania, and has ever since, uninterruptedly and continuously, maintained and operated said lines, and that said railway constituted an important railroad line for the interstate transportation of passengers, freight, United States mail and express matter.

Fifth. That in the year 1880 it erected upon its station premises on Canal street, in the City of Chicago, Illinois, bounded west by Canal street, south by Van Buren street, and north by Madison street, a large passenger station, known as the "Union Passenger Station," and since its construction has occupied said station, together with its tenants, the Chicago and Alton Railway Company, the Chicago, Burlington and Quincy Railway Company, the Chicago, Milwaukee and St. Paul Railway Company, and the Pittsburg, Cincinnati, Chicago and St. Louis Railway Company, and has retained charge itself of said passenger station and the maintenance and use thereof, the control and management of all trains therein and the watchmen and other employes necessary to conduct the passenger business at said station.

Sixth. That said Union Passenger Station is the only terminus in the City of Chicago of each of said railways, through which alone they can conduct the exchange of interstate passengers and baggage, United States mail and express parcels.

Seventh. That it and the said railway companies operate, in the aggregate, over 29,000 miles of interstate railways, between the City of Chicago and cities and points in various states in the United States.

Eighth. That for the better handling of local and through mails, the United States has established a postal station in said Union Passenger Station.

Ninth. That the number of passengers arriving at and departing from said station averages exceeding 30,000 per day. That 2,200 pieces of baggage are received and delivered at said station each day; that over 250 tons of United States mails are received and delivered at said station each day, and that 257 passenger trains arrive and depart at and from said station each day, between the hours of 6:30 A. M. and 11 P. M. That all tickets of interstate passengers arriving at and departing from said station, known as through tickets, have a coupon attached for conveyance through the City of Chicago to the station of the connecting lines of railroad designated on said ticket, other than said Union Passenger Station, the passenger, and baggage of the passenger possessing said ticket, in omnibuses and conveyances furnished under contracts made with Pennsylvania Company and said other railway companies, for the performance of services called for by said coupons.

Tenth. That there are five other large railway stations in the City of Chicago, Illinois, being the termini of

great railway systems of other railway companies, carrying passengers, freight, baggage and mail to and from said city.

Eleventh. That the main entrance to and exit from said Union Passenger Station, for all passengers arriving at or departing from it, and for all employes and the public properly using said station, is on Canal street, 100 feet north of Adams street, at the head of a flight of stairs leading down to the platform upon which trains arrive and depart. Said main entrance consists of a center opening, the width of five feet, and two side openings, each of the width of five feet. That practically all the passengers arriving at or leaving said station pass through the center opening thereof to the street, and that upon the arrival of trains discharging their passengers, the stairway leading to said doors and openings to the sidewalk is densely crowded with passengers and the public passing out, and passengers and the public passing into said station, prior to the departure of trains therefrom, and keep in constant use the main passenger entrance. That the sidewalk in front of said main entrance to said station is of the clear width of twelve feet, as prescribed by the ordinances of the City of Chicago, and upon the east side of Canal street, at said main entrance, and for some distance north and south, are temporarily stationed preceding the departure and arrival of the various trains, omnibuses which have brought and discharged interstate passengers from other passenger stations and from hotels, waiting for interstate passengers to arrive destined for other railroads, whose termini are at the various other passenger stations in the City of Chicago, or hotels in said City of Chicago, such omnibuses being engaged only in transporting through passengers between said stations,

and between hotels and the said station, in the City of Chicago. That the remainder of the frontage of said station, north and south of said main entrance, *has many openings* for the reception and delivery of baggage. The entire street for a distance of about 300 feet north of Adams street and 150 feet south of Adams street is in constant use by the arriving and departing passengers and the public and by vehicles receiving and discharging passengers, baggage and freight.

Twelfth. That every part of said station and the free and unobstructed use of all said entrances and exits, and the sidewalk and street adjacent to said entrances and exits, is necessary for the proper transaction of the ordinary daily business, and to properly afford to all passengers, the public and employes of the Pennsylvania Company, the usual and convenient facilities, incident and appurtenant to said passenger station and the facilities of said station, and that the exits and entrances and the use of said sidewalk and said frontage are taxed to their utmost capacity upon occasions when an unusual number of passengers arrive and depart therefrom.

Thirteenth. That in the endeavor to protect its passengers against extortion and annoyance of hackmen, expressmen and hotel runners, congregating around its said station, the Pennsylvania Company, on the 31st day of December, 1894, entered into a contract with one Leroy Eighme for the purpose of furnishing sufficient carriage and cab service to passengers arriving at said station, and for that purpose gave to said Eighme for a carriage stand a piece of ground in the north-west corner of its passenger station, at the corner of Madison street, thirty-two feet wide and ten feet long, and required him to keep at all times clean vehicles and competent drivers,

and to charge for the use of such vehicles the sums permitted by the ordinances of the City of Chicago, and to place an agent inside of said passenger station to notify arriving passengers whose destination was in the City of Chicago that suitable cabs and carriages could be obtained from said agent, and to require a cab or carriage to be driven to a point south of the main entrance for the reception of the passenger engaging the same, using the frontage of said station while receiving said passenger. That by means of said arrangement, the Pennsylvania Company was able to and did fully provide for the wants of all incoming passengers desiring transportation from its station to any part of said City of Chicago. That a similar arrangement was made with the Parmelee Transfer Company, January 31, 1902, which succeeded said Eighme, and which carries on said business in the same manner as, formerly, did said Eighme.

Fourteenth. That by an ordinance of the city council of the City of Chicago, printed and published (Section 498 of the Revised Code of Chicago, A. D. 1898, said section having been originally adopted and passed as an ordinance of said city council in 1885), the east side of Canal street occupying 110 feet between Adams and Madison streets, as the superintendent of police in said city should direct, was made a hack-stand for licensed hack drivers. That ever since said time hackmen have used said street front of the Pennsylvania Company illegally, and without its consent, and to the detriment and permanent injury of the property of the Pennsylvania Company, as a station or stand for their cabs, carriages or express wagons. That said licensed hackmen, expressmen and runners for hotels congregated in front of said main entrance and in a riotous manner solicited custom

of passengers leaving said station, and gave great trouble and annoyance thereby, to the passengers and the Pennsylvania Company.

Fifteenth. That especially since January, 1902, the Petitioners conspired and confederated to injure the business and property of the Pennsylvania Company and that they daily gathered together in numbers from eight to twenty men at a time in rows and groups upon the sidewalk in front of said main entrance and solicited in loud and boisterous manner customers, for their various business, and have entered said station daily at said main entrance by twos and threes at a time without the consent of the Pennsylvania Company, and against its express objections, and in like loud and boisterous manner solicited incoming passengers and baggage for their said vehicles and harassed and annoyed the interstate and local passengers of the Pennsylvania Company, and obstructed the sidewalk and the interior of said passenger station, and deprived the Pennsylvania Company of its lawful property rights in said street frontage and the free use of its station and the full use of its property, and created thereby a continuous private nuisance, damaging to the property of the Pennsylvania Company, and depriving it of the full and lawful beneficial use of its said station and street frontage and main entrance thereto.

That the Pennsylvania Company had applied to the superintendent of police of Chicago for protection against said actions of said Petitioners; that said superintendent of police was advised by the corporation counsel of said City of Chicago he had no right to afford the Pennsylvania Company such protection, and that the hackmen, expressmen and hotel runners had full legal right and authority to congregate in front of said passenger station

to ply their several business, as aforesaid, and to enter said passenger station and there ply their business at said station and upon the sidewalk and street abutting said main entrance.

That by the acts of said Petitioners great and substantial damages are inflicted upon the property of the Pennsylvania Company, different in kind and degree from that suffered by the general public, and incapable of computation, and which cannot be compensated by law.

Sixteenth. That respondent frequently complained under oath before a police magistrate in the City of Chicago against said Petitioners who entered said passenger station without respondent's consent, and obtained warrants to be issued for their arrest, and that upon trials by juries summoned from the vicinage in each of the several cases so tried the defendants were found not guilty, and that the further prosecutions against said Petitioners, or any of them, would be burdensome, expensive and fruitless to respondent.

Seventeenth. That upon information and belief the Petitioners, and each of them, are financially irresponsible and judgments recovered against them could not be collected upon execution, and that by reason of the premises the Pennsylvania Company has no adequate remedy at law and is without power at law to protect its rights of property in and to its said station and street frontage and is relievable only in a court of equity. That by the acts of said Petitioners, respondent is deprived of its property without just compensation and without due process of law, and is denied the equal protection of the laws in respect to its said property, contrary to the fourteenth amendment of the Constitution of the United States.

The bill of complaint concluded with a prayer that the

process of subpoena issue, that a temporary injunction be granted, and that the Petitioners answer the bill of complaint, not under oath, and that each of them may be perpetually enjoined from entering the passenger station for the purpose of soliciting the custom of incoming passengers for their cabs, carriages, express wagons or hotels, respectively, and that the occupation of the sidewalk and street abutting the main entrance to said station for the purpose of soliciting custom of passengers for their said cabs, carriages, express wagons and hotels, by Petitioners, be decreed to be a nuisance and damage to respondent's property, and that Petitioners, and all persons acting in concert with them, be perpetually enjoined from congregating singly or in large numbers upon the sidewalk at the main, or any other, entrance to said station, for the purpose of plying their respective vocations, and from interfering with and soliciting the custom of any of the passengers upon the sidewalk adjoining said station at the main or any other entrance to said station, and that other and further relief in equity may be granted.

The bill of complaint was sworn to by the station master of the Pennsylvania Company.

The Petitioners appeared, and on March 8, 1902, filed their joint answer, in which they admitted and alleged as follows:

ANSWER.

First. That they were individually and separately engaged in the business of cab and carriage driving and that all operated cabs, carriages and express wagons, for the purpose of carrying passengers and baggage for hire in the City of Chicago. That each held a license from the City of Chicago to pursue their respective vocations and had complied with all the ordinances of the City of Chi-

cago relating to said business, and that the cab, carriage and express business in Chicago is affected with a public use and is subject to certain rules and regulations on the part of the City of Chicago.

Second. They denied that the matter in dispute in said proceeding exceeded, exclusive of interest and costs, the sum of two thousand dollars ($2,000), and that it arose under the constitution and laws of the United States.

Third. They disclaimed any knowledge as to how the Pennsylvania Company was incorporated, but denied its power and right and authority to engage in the business of running hacks and cabs or carriages, for carrying passengers to and from hotels, private residences and depots, in the City of Chicago, or to operate express wagons therein.

Fourth. They disclaimed all knowledge as to how the Pennsylvania Company obtained possession of the right of way of the Pittsburg, Fort Wayne and Chicago Railway.

Fifth, Sixth, Seventh, Eighth. They disclaimed all knowledge as to the construction of the passenger station and of the right of railroad companies to use the same; and as to whether said passenger station is the only terminus in Chicago of the railroad lines using the same; and as to the number of miles of railway that are operated by the different lines using the depot; and as to the establishment of a postal station in said depot.

Ninth. They alleged that in cases where passengers arrive at said passenger station holding through tickets to some other point, so as to make it necessary for them to be taken from said passenger station to the depot of some other railroad in Chicago said passengers have always

been, and are now carried, not in cabs or carriages, but in omnibuses known as Frank Parmelee omnibuses, which always stand on Canal street right in front of the main entrance of said passenger station in numbers as many as from six to ten at a time, to meet all trains, and standing most of the day, take up that part of the street adjoining the sidewalk opposite to and near the main entrance to said passenger station, so as to make it impossible for the cabs or carriages of Petitioners to go close to said main entrance, and that said omnibuses drive only to certain hotels and public places, and do not, as a rule, go to miscellaneous places or private residences, and heretofore had and do not now have connection with that part of the business which usually belongs to cabs and carriages, and that said omnibuses have no more rights upon the streets to solicit traffic or trade than Petitioners or other licensed public cab, carriage or hack drivers or expressmen.

Tenth. They admitted there are five other railway stations which are the termini of great railway systems in Chicago.

Eleventh. They admitted that the main entrance to and exits from said passenger station are on Canal street and on the corner of Adams street, but they deny that they have at any time interfered with it, obstructed any of the passengers of said depot or interfered with the free passage of any passengers or other people who wanted to go out of said building.

Twelfth. They alleged that the passenger station is affected with a public use and is semi-public property. That they have at no time interfered with the use of said property for which it was erected and maintained.

Thirteenth. They charged that the Pennsylvania Company have for a number of years harassed and persecuted them and greatly wronged them with legal proceedings and malicious proceedings and illegal arrests, not for the purpose of protecting the property of said company or the passengers coming to and departing from the passenger station, but for the illegal and wrongful purpose of establishing a monopoly at said passenger station, in the business of carrying passengers and baggage to and from the different depots and hotels in said city. That said business is lawful and a public convenience and petitioners have been engaged in same for a number of years and are regularly licensed by the City of Chicago and authorized to conduct said business and have not violated the law and have not been guilty of maltreating or injuring or unjustly dealing with any passengers. That the Pennsylvania Company entered into an unlawful and criminal conspiracy with one Leroy Eighme, for the purpose of creating a monopoly in the cab, carriage and express service in and about said depot and destroying the business of Petitioners, by which it was agreed said Eighme should solicit inside of the main entrance of said passenger station, business for cabs and carriages and expressmen, and that all other cab and carriage or expressmen, should be kept out of said station by the Pennsylvania Company and away from the entrance thereto so as to give said Eighme a monopoly of said business at said place. That prior to said agreement and conspiracy with said Eighme, all licensed cab and carriage and expressmen in said city had been accorded equal privileges at said depot, but after the making of said unlawful agreement and conspiracy, the Pennsylvania Company refused to permit any of the Petitioners or any other licensed cab or carriage men to

stand inside of said depot or on the outside of said depot near the entrance thereto upon the sidewalk and solicit business and at the same time the Pennsylvania Company protected and kept inside of the main entrance of said depot one of the agents or employes of said Eighme, who in a loud voice solicited business for cab and carriages, so that it was impossible for any passengers to go out of said station without being hailed by said agent of Eighme and solicited to take his cab or carriage. That the Pennsylvania Company derived a share of the earnings of said cab and carriage business so conducted by said Eighme, and the officers and agents of the Pennsylvania Company as a consideration, also, were given free cab and carriage service by said Eighme in pursuance of said monopoly. That the Parmelee Transfer Company has succeeded said Eighme and is deriving the same benefits, and the officers and agents of the Pennsylvania Company are given free cab and carriage service and perquisites by said Parmelee Transfer Company as formerly did said Eighme, and that said monopoly is a criminal act under the laws of the State of Illinois. That all the trouble in this case arose out of said agreement with the Pennsylvania Company to establish a monopoly of the cab and carriage business in and about said passenger station and derive a profit out of said business. That it has no legal right to enter into said monopoly and to have its officers and agents obtain perquisites, which they otherwise would not be entitled to, and that the Pennsylvania Company in connection with the Parmelee Transfer Company, are now trying to destroy the business of Petitioners and other licensed cab and carriage drivers in the City of Chicago and make it impossible for them to prosecute a legitimate business.

The Petitioners denied that they or any of them practiced extortion and annoyed any passengers at said station or did anything to injure the business of the Pennsylvania Company, or that they committed a nuisance or unjustly treated or defrauded any of the passengers at said station as alleged in the bill of complaint.

Fourteenth. They admitted that the City of Chicago passed an ordinance setting apart a portion of the street on the east side of Canal street and south of Madison street, for a hack stand and for the purpose of accommodating the public, so that passengers arriving at said passenger station would be able to obtain cab and carriage service when needed. That said hack stand is too small and is not opposite any of the public entrances of said station. That it does not interfere in any way with the business at or approach to said passenger station. They deny that the Pennsylvania Company has been subjected to any of the loss or damage or inconvenience alleged in the bill of complaint.

The Petitioners further alleged that the Pennsylvania Company is engaged in a business affected with a public interest and that it was proper to locate a hack stand at that place. That the title to the street on which said hack stand is located is not in the Pennsylvania Company, but is in the City of Chicago, and that said City had the right to locate said hack stand and all other hack stands, which in its judgment would best serve the public interest.

Fifteenth. The Petitioner alleged that in February, 1896, the Pennsylvania Company and the Pittsburg, Ft. Wayne and Chicago Railway Company filed a bill of complaint in the Circuit Court of Cook County, Illinois, on the chancery side thereof, against the City of Chicago

and its chief of police, to which suit one of the Petitioners, Walter Owens, became a party defendant, in which the Pennsylvania Company presented substantially all of the important questions which are set out and involved in the bill of complaint subsequently filed in the Circuit Court of the United States and in which suit Petitione Walter Owens filed an answer, upon which issues were joined in said Circuit Court of Cook County, and a trial was had and judgment was entered, from which an appeal was taken by the Pennsylvania Company to the Supreme Court of the State of Illinois, and that all of the questions which the Pennsylvania Company now here asks the Circuit Court to pass on were decided by the Supreme Court of the State of Illinois, adversely to the Pennsylvania Company and that the decision of the Supreme Court of the State of Illinois stands unreversed and in full force and is binding upon the Pennsylvania Company, in this state. The Petitioners made the said bill of complaint and the said answer of Walter Owens and the opinion of the said Supreme Court of Illinois referred to, exhibits A, B and C, to and a part of their said answer. (The case of the Supreme Court of Illinois referred to is: *The Pennsylvania Company et al.* v. *The City of Chicago, et al.*, 181 Ill. Supreme Court R., 289.

Sixteenth. The Petitioners admitted that they were prosecuted upon complaint of the Pennsylvania Company in the Police Court in the City of Chicago, and alleged that they had not violated any laws of the State or ordinances of the City of Chicago, but that said prosecutions were intended to destroy the business of petitioners and enable the Pennsylvania Company and its agents to maintain the monopoly aforesaid.

Seventeenth. The Petitioners denied that they were financially irresponsible, and denied that the Pennsylvania Company was deprived of the use of its property without due process of law and denied all manner of unlawful combination and confederacy with which they were charged in said bill, and denied that the Pennsylvania Company was entitled to the relief or any part thereof prayed in and by its said bill.

Upon the hearing of the motion of the Pennsylvania Company for a preliminary injunction July 17, 1902, there was filed and submitted at said hearing by the Pennsylvania Company, by order of the United States Circuit Court, an ordinance of the City of Chicago, of which the portions of Section 498 (adopted Dec. 31, 1885) involved, are as follows:

"Any duly licensed hackney coach, cab or other vehicle for the conveyance of passengers, may stand, while waiting for employment, at any of the following places, and for the period of time hereinafter provided.

"Stand No. 4. The east side of Canal street, occupying one hundred and ten feet between Adams and Madison streets, as the superintendent of police may direct."

"Stand No. 6. At all railroad depots ten minutes previous to the arrival of all passenger trains."

"Section 503. (Duty of Police.) It shall be the duty of the several officers and members of the police department to see that all the ordinances regulating hackney coaches, cabs, and all other vehicles for the conveyance of persons for hire, are strictly complied with, and any policeman shall have power and authority to order away from the stands, and from all other places, any hackney coach, carriage or cab not provided with a number or with lamps fixed up, lighted and numbered, as herein-

before required, or not furnished with proper and suitable harness or horses, or whenever the same shall be improperly obstructing the way or street, or whenever the horses attached thereto are unruly, or whenever the driver or person having charge of any such hackney coach, carriage or cab is intoxicated, or in any manner misbehaves himself. If any person having charge of such hackney coach, carriage or cab, shall refuse or neglect to obey any such order, he or they shall forfeit and pay for every such offense the sum of five dollars, to be recovered from the owner or driver of such hackney coach, carriage or cab, severally and respectively."

The United States Circuit Court, Hon. Christian C. Kohlsaat, district judge, presiding, on July 17, 1902, *nunc pro tunc* as of June 6, 1902, granted a preliminary injunction in accordance with the prayer of the bill of complaint.

The Petitioner appealed from said order to the United States Circuit Court of Appeals for the Seventh Circuit, in which court, as of the October term, 1902, the cause was heard on appeal and it was ordered that the parts of the decree of the United States Circuit Court appealed from, to wit:

"It is therefore ordered, adjudged and decreed, that the said defendants Harry Donovan * * * and all other persons claiming to act under their or such of their authority, direction or control, or to whom notice of this order of injunction shall come, do absolutely desist and refrain from entering the passenger station of complainant at the corner of Adams and Canal streets, in the City of Chicago, to solicit custom of the incoming passengers for cabs, carriages, express wagons or hotels, and do absolutely desist and refrain from soliciting the

custom of passengers for cabs, carriages, express wagons or hotels in said passenger station," be and the same are hereby affirmed, and that the second part of said decree, in the following words and figures, to wit: "and do absolutely desist and refrain from congregating upon the sidewalks in front of, adjacent to or about said entrance to said passenger station and from soliciting the custom of passengers for cabs, carriages, express wagons or hotels, until the further order of the court in the premises," be modified to restrain appellants from congregating upon the sidewalk in front of, adjacent to or about the entrance of appellee's passenger station in Chicago, and from there soliciting the custom of passengers so as to interfere with the ingress and egress of passengers and employes, and when so modified the same be, and is hereby affirmed at the costs of the appellants.

Upon the mandate of the United States Circuit Court of Appeals being filed in the United States Circuit Court, March 19, 1903, the cause came on for hearing before Hon. Christian C. Kohlsaat, judge, upon the bill of complaint, the answer thereto, the replication to said answer and the affidavits filed in support of the bill and in support of the answer, upon the agreement of counsel for the respective parties that said affidavits should be taken as the testimony offered.

The United States Circuit Court on April 3, 1903, entered a decree finding, "that it has jurisdiction of the parties and of the subject-matter of this cause, and that all the material allegations of said bill of complaint are true; that the equities of this cause are with the complainant, and that the complainant is entitled to the relief prayed for in its bill of complaint and to have the temporary injunction heretofore issued in this cause

made permanent; that the defendants, or some of them, at the time of the filling of the bill herein, and for some weeks prior thereto, did daily enter the Union Passenger Station of complainant for the purpose of soliciting the custom of incoming passengers for cabs, hacks and carriages, and did in said station solicit the custom of such incoming passengers against complainant's protests, and that the defendants at the time of the filing of the bill herein, and for some weeks prior thereto, did daily congregate in numbers from eight to twenty at a time upon the sidewalk in front of, adjacent to and about the main entrance of complainant's railway station, situate at the corner of Canal and Adams streets, in the City of Chicago, against complainant's objections, for the purpose of soliciting, and did there daily solicit, the custom of incoming passengers for their cabs, carriages, express wagons and hotels, and thereby did interfere with the ingress and egress of passengers and employes of complainant to and from said station."

The United States Circuit Court upon the foregoing findings, adjudged and decreed that the said defendants, Harry Donovan * * * "and each of them, their agents and servants, and all persons claiming to act under their or each of their authority, direction or control, or to whom notice of this decree shall come, be, and they are, hereby perpetually enjoined from entering the passenger station of complainant, at the corner of Adams and Canal streets, in the City of Chicago, to solicit the custom of incoming passengers for cabs, carriages, express wagons or hotels, and be, and they are, hereby perpetually enjoined from soliciting the custom of passengers for cabs, carriages, express wagons and hotels in said complainant's said passenger station, and be, and they

are, hereby further perpetually enjoined from congregating upon the sidewalk in front of, adjacent to or about the main entrance of complainant's said passenger station, in Chicago, and from there soliciting the custom of passengers so as to interfere with the ingress and egress of passengers and employes of said complainant."

"It is further ordered that the defendants do pay all the costs in this case to be taxed by the clerk, and that the clerk issue execution therefor against the said defendants."

"Which said decree is entered without prejudice to the rights of defendants, or any of them, to take an appeal therefrom or sue out writ of error or *certiorari* to have this cause reviewed by the Circuit Court of Appeals in and for the Seventh Circuit, of, by the Supreme Court of the United States."

Petitioners appealed from said final decree to the United States Circuit Court of Appeals, for the Seventh Circuit, and on the 13th day of May, 1903, the appeal having prior thereto been fully perfected, the United States Circuit Court of Appeals for the Seventh Circuit, adjudged and decreed, "that the decree of the said Circuit Court in this cause be, and the same is, hereby affirmed with costs."

Argument.

Your Petitioners believe that the aforesaid decree of the United States Circuit Court of Appeals for the Seventh Circuit, is erroneous, and that this Honorable court should require that the said cause should be certified to it for its review and determination in conformity with the provisions of the Act of Congress in such case made and provided, upon the following grounds:

(1) By Section 12, Article 2, Constitution of Illinois, ratified by the people July 2, 1870, and in force August 8, 1870, it was declared:

> "Railways heretofore constructed or that may hereafter be constructed in this state, are hereby declared public highways, and shall be free to all persons for the transportation of their persons and property thereon, under such regulations as may be prescribed by law." (Hurd's Statutes, 1901, p. 72.)

The General Assembly of Illinois "prescribed by law" that:

> "Every railroad corporation in the State * * * shall at all junctions with other railroads, and at all depots where such railroad companies stop their trains regularly to receive and discharge passengers in cities and villages, for at least one-half hour before the arrival of, and one-half hour after the arrival of any passenger train, cause their respective depots to be opened for the reception of passengers; said depots to be kept well lighted and warm for the space of time aforesaid." (Laws 1883, p. 125, Hurd's Statutes 1901, p. 1385, Sec. 84.)

Also:

> "That all railroads in this state carrying passengers or freight shall, and they are, hereby required to, build and maintain depots for the comfort of passengers and for the protection of shippers of freight, where such railroad companies are in the practice of receiving and delivering passengers and freight, at all towns and villages having a population of five hundred (500) or more, on the line of their roads, and roads leased or operated by them." (Laws 1877, p. 165, Hurd's Statutes 1901, p. 1378, Sec. 50.)

By the Constitution of the State of Illinois, and "regulations" governing all railways, "prescribed by law," they are made free public highways, and the depots, indis-

pensable thresholds and entrances thereto, and to secure obedience to said "regulations" penalties are provided, enforceable in the name of the people of the State of Illinois, against railways.

(2) The General Assembly of Illinois, by Clauses 9, 10, 20, 42, 43, 66 and 96, of Section 62, Article 5, of the General Act for the incorporation, the cities and villages, in force July 1, 1872 (Laws 1871-72, p. 218, Hurd's Statutes, 1901, p. 285), delegated the authority to city councils in cities and empowered them, to regulate the use of streets, alleys, sidewalks and public grounds; prevent obstructions upon the same; regulate traffic and sales upon the streets, sidewalks and public places; license, tax and regulate hackmen, draymen, omnibus drivers, cabmen, porters, expressmen and all others pursuing like occupations, and to prescribe their compensation; to license, regulate, tax and restrain, runners for stages, cars, public houses, or other things, or persons; to regulate the police of the city, and pass and enforce all necessary police ordinances; to pass all ordinances and rules, and make all regulations, proper or necessary to carry into effect the powers granted to cities or villages with such fines or penalties as the city council shall deem proper.

(3) The City of Chicago, by a general law, uniform as to the class upon which it operates, in pursuance of the powers delegated to it by the General Assembly, "prescribed by law" (Sections 498-503, ordinances adopted December 31, 1885), "regulations" permitting "any duly licensed hackney coach, cab or other vehicle for the conveyance of passengers, to stand, while waiting for employment, * * * at all railroad depots, ten minutes previous to the arrival of all passenger trains."

(This ordinance has the force of a statute passed by

the General Assembly of Illinois. *N. O. Water Works* v. *N. O.*, 164 U. S., 481.)

The Pennsylvania Company in coming into the State of Illinois and seeking to do business here, owes obedience to the constitution and the laws of the State and the ordinances of the City of Chicago enacted in pursuance thereof, and is answerable according to the laws of the State of Illinois, and the ordinance of the City of Chicago, for acts of nonfeasance or of misfeasance, committed in said city. *St. Louis* v. *Western Union Telegraph Co.*, 148 U. S., 103; *N. O. Water Works* v. *N. O.*, 164 U. S., 481; *Chicago and Milwaukee Railway Co.* v. *Solan*, 169 U. S., 137.

The effect of the decree is to protect the Pennsylvania Company in maintaining a monopoly in the City of Chicago in violation of the laws of the State. It should not be permitted to shield itself by the decree of a court of equity, but should be left to seek its redress in the courts of the State of Illinois.

(4) The title to the sidewalks and streets and control thereof, at the entrance to and abutting the Union Passenger Station of the Pennsylvania Company, are vested in the City of Chicago exclusively for public use. (*Penn. Co.* v. *City of Chicago*, 181 Ill., 296.)

(5) The operation and effect of the perpetual injunction granted by the Circuit Court of the United States against Petitioners, is to protect the Pennsylvania Company, in usurping from the City of Chicago the control of the sidewalk and public street for its special benefit and profit, to the exclusion of the Petitioners who are regularly licensed common carriers in the City of Chicago, and to enable the Parmelee Transfer Company as the employes of the Pennsylvania Company, to monopo-

lize the use of the sidewalk and street, and business and profits derived from said monopoly, and to protect it in converting the street and the sidewalk abutting the entrance to the Union Passenger Station of the Pennsylvania Company and the said Union Passenger Station from a public highway and public place, required to be free to all persons, into a private way for its exclusive employment, business and use to the exclusion of, and discrimination against the Petitioners and the public, contrary to the constitution of the State of Illinois and the laws of said State enacted in pursuance thereof, and the ordinance of the City of Chicago adopted by virtue of the powers delegated to and vested in the city council of the City of Chicago, thereby sanctioning discrimination in the business of a public carrier at a public place and subjecting place to the purposes of such discrimination, preventing competition in said business, creating a monopoly in favor of the Pennsylvania Company and its employe, against the organic and statute laws of said state, and against public policy.

(6.) The perpetual injunction protects the Pennsylvania Company and its employe, the Parmelee Transfer Company, in maintaining a monopoly in the business of carrying passengers, and enables it to control the transportation of passengers and baggage beyond its Union Passenger Station and line, contrary to its charter, and the privileges and powers permitted to be exercised by it, by the constitution and statute of the State of Illinois, and against public policy.

(7.) The Pennsylvania Company should not be permitted to come into a court of equity and ask the protection of such court, in the performance of acts *ultra vires*, in maintaining a monopoly in the business of a public

carrier, against the constitution and statute laws of a state, and public policy, *even where the state or public authorities have not interposed an objection to the exercise of acts ultra vires by the Pennsylvania Company.* A court of equity is not open to a litigant whose acts are violations of law and opposed to public policy and the organic and statute laws of a state, and who seeks its sanction and aid to enforce a contract *ultra vires,* and maintain a monopoly. It will not grant such relief under such circumstances.

McConnell v. *Pedigo,* 92 Ky., 465;
Union R. Co. v. *Langlois,* 9 Mont., 419;
Ind. Ry. Co. v. *Dohn,* 153 Ind, 10;
Crawens v. *Rogers,* 101 Mo., 247;
Kalamazoo H. & B. Co. v. *Sootman,* 84 Mich., 194.

(8.) No violation of the law is found by the decree of the United States Circuit Court to have been committed by Petitioners. The decree finds, first, That the Petitioners did daily enter the Union Passenger Station of complainant for the purpose of soliciting and did in said station solicit the custom of incoming passengers, for cabs, hacks and carriages, against the Pennsylvania Company's protests. Second, That the Petitioners did daily congregate in numbers from 8 to 20 at a time upon the sidewalk in front of, adjacent to and about the main entrance of complainant's railway station, for the purpose of soliciting, and did there daily solicit, against the Pennsylvania Company's objections, custom of incoming passengers for their cabs, carriages, express wagons and hotels, *and thereby did interfere with the ingress and egress of passengers and employes of the Pennsylvania Company to and from said station.* This is a finding

that Petitioners used the sidewalk of the City of Chicago by congregating there and soliciting patronage, a matter exclusively within the control of, and regulated by the City of Chicago,—purely a matter of Police Regulation.

The decree is silent as to the length of time Petitioners were engaged in soliciting custom in the railway station. The gist of the effense being, that Petitioners "did in said station solicit the custom of such incoming passengers, against complainant's protests." Nor does the decree find the length of time when, nor record any objection thereto, that the Petitioners consumed while congregated upon the sidewalk, but the gist of the offense charged consisted in congregating in numbers of from eight to twenty at a time upon the sidewalk and from there soliciting custom of incoming passengers, *thereby* interfering with the ingress and egress of passengers and employes of complainant to and from said passenger station.

(9.) The Pennsylvania Company could not lawfully under the constitution and laws of the State of Illinois, exclude from its Union Passenger Station in said city, cabmen and carriage men duly licensed as such by the City of Chicago, and prohibit them from soliciting custom for their vehicles in said passenger station, such places being public highways and free to all persons.

(10.) The Pennsylvania Company could not lawfully under the constitution and laws of the State of Illinois, exclude from its Union Passenger Station in said city, cabmen and carriage men duly licensed as such by the City of Chicago, and prohibit them from soliciting custom for their vehicles in said passenger station and by contract bestow the privilege upon the Parmelee Transfer Company, denied by it to Petitioners, and thereby

discriminate against them, and build up a monopoly in the business and directly or indirectly derive a profit from the maintenance of said monopoly. (*Hack and Bus Company* v. *Sootsa*, 84 Mich., 194; *The Union R. Co.* v. *Langlois*, 9 Mont., 419; *McConnell and Pedigo* v. *Hays*, 92 Ky., 465; *Union Co.* v. *Dohn*, 153 Ind., 10; *Cravens* v. *Rogers*, 101 Mo., 246; *Lindsay* v. *Anniston*, 104 Alabama, 267.

(11.) The Pennsylvania Company could not lawfully exclude from the sidewalk abutting its Union Passenger Station, Petitioners as duly licensed cab and carriage men in the City of Chicago and admit its employee or a competitor of the Petitioners in the same line of business, and give him the advantage and exclusive opportunity of soliciting the custom on the ground that the congregating of eight to twenty of Petitioners upon the sidewalk interferes with the ingress to and egress from said passenger station by its employees and the passengers arriving thereat and departing therefrom. The congregating of from eight to twenty on the sidewalk clearly twelve feet in width, and four hundred and fifty feet in length, soliciting custom of the public, would scarcely interfere with the ingreess to and egress from said passenger station byt he passengers through the center and side openings of the main entrance, each being five feet in width, a total of fifteen feet, sufficient to justify the Pennsylvania Company insisting upon *all* of the eight to twenty men, being prohibited from congregating there, so that their places might be occupied by a sufficient number of the solicitors of the Parmelee Transfer Company to supply the demands of the passengers and public, made necessary by the removal of from eight to twenty of Petitioners. If the capacity of the place and the de-

mands of the public did not admit of from eight to twenty men congregating upon the sidewalk, then the decree should have found and determined what number the capacity of the place and the demands of the public required and justified, but it in effect leaves the Pennsylvania Company at liberty to permit the Parmelee Transfer Company to place upon said sidewalk, a greater number of solicitors than twenty, and displace petitioners and solicit custom. It protects the Pennsylvania Company in doing just as it pleases in that respect. Not only within a building impressed by the Constitution and Statute laws of Illinois, with the character of a public highway, free to all persons, but upon a public sidewalk and street belongoing to and within the control of the City of Chicago, contrary to the ordinances of the city and the laws of the state. If the decree in this case is upheld it is within the power of the corporations owning and controlling the five other depots, which are termini of the great railways entering into Chicago, together with the Nennsylvania Company, to make a like contract with the Parmelee Transfer Company and establish a monopoly of the entire cab and carriage business and express business, in the City of Chicago, and drive all competitors out of business. The condition of things made possible and permitted by this decree is against public policy, contrary to the spirit and purposes of the laws and we respectfully submit it violates every principle of equity jurisprudence to foster and uphold it.

XII. And your petitioners further aver that the present case is one in which it is proper for this court to issue a writ of *certiorari*, for the following reasons, among others:

1. To permit a railroad company to engage in the

transportation of passengers and baggage beyond its termini and in a line of business not authorized by its charter and protect it in a court of equity is unlawful and unreasonable.

2. Because the Circuit Court of Appeals held that railroad companies may engage in all lawful business outside its duties as a common carrier without limitation independent of the provisions of its charter, the ordinances of a city or the laws of a state.

3. The inquiry in this cause and this application is of sufficient importance in itself and sufficiently open to controversy to justify the writ.

4. Because the questions of law involved herein have not been passed upon by this court.

5. Because the public interests and the interests of jurisprudence require the decision of this court upon the questions of law involved herein.

6. Because in view of the fact of the millions of people daily using railways and railway stations property in this country, the question is one that affects, not only the interest of the parties to this cause, but one of public concern, and in which the public is vitally interested, and the questions are of sufficient, general, national and material importance and interest, as to make it necessary that it should be determined by the court of last resort.

7. Because there is a conflict in this respect between the law as expounded by the said Circuit Court of Appeals, and the law and rule in the state courts held in the same district and circuit.

8. Because there is a conflict in this respect between the law as expounded by the said Circuit Court of

Appeals and the law as expounded by a majority of the state courts of the United States.

9. Because the questions involved in this application are of sufficient gravity and general importance to justify the court in awarding the writ.

10. Because the Circuit Court of Appeals held that railway companies, common carriers within its depots and freight houses can grant exclusive privileges to one common carrier of passengers, baggage or freight to the exclusion of other common carriers; this is violative of every principle of law prohibiting quasi public corporations from discrimination and the prohibition of monopolies.

11. Because the business of common carriers is not local but national in its character, impressed with public uses and interwoven with public interests affecting the rights of all citizens as well as in the interests of these litigants.

12. The writ should issue in this cause, because it has been the uniform practice of this court, where questions of the gravity and importance involved herein, for this court to award the writ.

Wherefore your Petitioners respectfully pray that a writ of *certiorari* be issued out of and under the seal of this honorable court, directed to the United States Circuit Court of Appeals, for the Seventh Circuit, commanding said court to certify and send to this Honorable Court on a day certain to be therein designated, a full and complete transcript of the record and all the proceedings of the said Circuit Court of Appeals in the said case therein entitled, *"Harry Donovan et al., Appellants* v. *Pennsylvania Company ,Appellee,* No. 987," to the end

that said cause may be reviewed and determined by this Honorable Court as provided by law and that your Petitioners may have such other and further relief and remedy in the premises as to this court may seem appropriate and in conformity wnth the laws and the rules of this Honorable Court, and that the said decree of the said United States Circuit Court of Appeals in the said case and every part thereof, may be reversed by this Honorable Court.

RICHARD J. COONEY and
JAMES R. WARD,
Counsel for Petitioners.

I hereby certify that I have examined the foregoing petition, and in my opinion the petition is well founded, and that the case is one in which the prayer of the petitioners should be granted by this court.

Of Counsel for Petitioners.

FILE COPY.

Office Supreme Court U. S.
FILED
OCT 24 1904
JAMES H. McKENNEY,
Clerk.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1904.

No. ~~115~~ 5.

HARRY DONOVAN, et al.,
Petitioners,
vs.
THE PENNSYLVANIA COMPANY,
Respondent.

Certiorari, to the United States Circuit Court of Appeals, for the Seventh Circuit.

BRIEF AND ARGUMENT OF PETITIONERS.

RICHARD J. COONEY,
JAMES R. WARD,
Counsel for Petitioners.

THE GUNTHORP-WARREN PRINTING CO., 118 RANDOLPH ST. CHICAGO.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1904.

No. 116

HARRY DONOVAN, GEORGE CALLAHAN, CHARLES LEWIS, M. M. LEE, JOSEPH WARD, W. H. ASHLEY, R. L. TAYLOR, I. GANTHIER, L. VAUGHN, SANFORD McGILL, GEORGE BAUDE, J. BAUDE, A. REILLY, JAMES CASEY, THOMAS CASEY, EDWARDS DEVANEY, W. OWENS, JOHN KERR, A. JOHNSON, TOM QUINLAN, JOHN TIEVENS, M. BRADY, GEORGE QUINLAN, GEORGE GUSTIN, JOHN O'TOOLE, NICHOLAS STOKES, C. CONNELL, JAMES SULLIVAN, PATRICK QUINLAN, C. CUNNINGHAM, J. VAUGHN, PETER TAYLOR, WILLIAM SIMMONS, PATRICK REGAN, JAMES REGAN, JOHN J. CASEY, M. CROWLEY, M. GEARY, A. COOK, CHARLES P. ENGLE, EUGENE GIBBS and JOHN CASEY,

Petitioners,

vs.

THE PENNSYLVANIA COMPANY,

Respondent.

Certiorari, to the United States Circuit Court of Appeals, for the Seventh Circuit.

STATEMENT OF THE CASE.

To the Honorable Supreme Court of the United States:

The respondent, the Pennsylvania Company, derived its existence and powers from a special act of the legislature of the State of Pennsylvania, approved April 7, 1870. It organized in pursuance of that act, and

established its principal office in the City of Philadelphia, Pennsylvania (Rec., 3), in April, 1870, for the purpose of constructing, maintaining and managing railroads, depots, etc., and exercising powers and privileges usually possessed by railroad corporations, for the purpose of carrying passengers, baggage, freight and other traffic throughout the United States. (Rec., 3, 4.)

In April, 1871, the respondent acquired an unexpired lease for the term of 991 years, and the possession and control of certain lines of railway from the City of Chicago, Illinois, to Pittsburg, Pennsylvania, and other points in the United States, and commenced the operation of said railway lines for the remainder of the term of said lease, from its passenger station situated at the corner of Canal and Adams street in the City of Chicago, Illinois, and continued uninterruptedly to maintain and operate said railway lines from said station, for the local and interstate transportation of passengers, baggage, freight, express and United States mail. (Rec., 4.)

In the year 1880, respondent erected upon its premises on Canal street in the City of Chicago, Illinois, a large passenger station, known as the "Union Passenger Station," which is bounded on the west by Canal street, south by Van Buren street and on the north by Madison street, and ever since it has occupied said station, together with its tenants, the C. & A. Ry. Co., the C., B. & Q. Ry. Co., the C., M. & St. P. Ry. Co., and the P. C. C. & St. L. Ry. Co., retaining the charge and maintenance of its passenger station, and the control and management of all trains therein, and

the employes necessary to conduct the passenger business at said station. (Rec., 5.)

The Union Passenger Station is the only terminus in the City of Chicago through which the respondent and its tenants conduct the exchange of interstate passengers, baggage, express, mail and freight over 29,000 miles of interstate railways between the City of Chicago and other cities in the United States. (Rec., 5.)

The number of passengers arriving and departing from said Union Station in February, 1902, averaged exceeding 30,000 per day, and the number of pieces of baggage exceeded 2,200 per day, and the quantity of United States mail exceeded 250 tons per day. The number of passenger trains arriving and departing thereat, and therefrom, exceeded 257 per day. The tickets of interstate passengers carried on said railway have coupons attached for the conveyance, through the City of Chicago, from said Union Station to the station of connecting lines of railways designated on said ticket, entitling the passenger and baggage to be conveyed in omnibuses and conveyances furnished under contracts made with the respondent and said railway companies, for the performance of the services required by said coupons. (Rec., 6, 7.)

There are five other large railway stations in the City of Chicago, Illinois, being the termini of great railway systems of other railway companies carrying passengers, freight, baggage and mail, to and from said city. (Rec., 7.)

In December, 1894, the respondent entered into an agreement with one Eighme, for the purpose of furnishing carriages and cab service to passengers ar-

riving at said Union Station, and gave said Eighme a carriage stand on its ground in the northwest corner of its passenger station, thirty-two feet wide, and ten feet long, and required him to keep at all times, vehicles and drivers, and to charge for the use of such vehicles to passengers, the sums permitted by the ordinances of the City of Chicago for carrying passengers to and from said Union Station, to and from any part of the City of Chicago, and permitted said Eighme to place his agent inside of said Union Station, "to notify arriving passengers whose destination was in the City of Chicago, that suitable cabs and carriages could be obtained from said agent," and to require cabs or carriages to be driven and stand at and near the main entrance of said Union Station, for the reception of the passenger engaging the same, thereby using the frontage of said station, sidewalk, and street abutting thereon while waiting for and receiving said passengers, and most of the time occupying that portion of the street and sidewalk, to the exclusion of petitioners. By this arrangement, the respondent "did fully provide for the wants of all incoming passengers desiring transportation from its station to any part of the City of Chicago." A similar arrangement was made by respondent with the Parmelee Transfer Company, January 31, 1902, who succeeded Eighme, to carry on said business in the same manner. Efforts of the respondent to maintain and enforce this arrangement, and to occupy the street near the main entrance, so that the same could not be used by petitioners, caused this controversy. (Rec., 9, 12.)

In 1885 the City Council of the City of Chicago, by

virtue of the authority delegated and vested in it by the Legislative Department of the State of Illinois by the enactment of a general statute, adopted an ordinance which became a law in said city, by which 110 feet on the east side of Canal street, between Adams and Madison streets, the title of which was in the city, as the superintendent of police of said city should direct, was made a hack stand for licensed hack drivers, cabmen and carriagemen of said city. Said ordinance has remained in force in said city, for maintaining said hack stand, ever since. The petitioners are duly licensed hackmen, cabmen, carriagemen and expressmen in and by the City of Chicago, and by virtue of their authority as such licensees and the privileges conferred upon them by said ordinance, in February, 1902, and for years prior thereto occupied said space with their men and vehicles, for the purpose of delivering express, baggage and passengers carried by them as common carriers to said station, and used the sidewalks and street abutting said station, for the purpose of soliciting the custom (except from through passengers) of incoming passengers at said station, to be carried by them as such common carriers from said station to other parts of the City of Chicago. (Rec., 10, 160-162.)

The main entrance at said Union Passenger Station is on Canal street, 100 feet north of Adams street, at the head of a flight of stairs leading down to the platform in the station, upon which trains arrive and depart. The main entrance consists of a center opening five feet in width, and two side openings, each five feet in width. The sidewalk abutting said station and in

front of said main entrance, is of the clear width of twelve feet as prescribed by the ordinance of the City of Chicago. The respondent, through its contract with Eighme and his successor, The Parmelee Transfer Company, maintained upon the east side of Canal street at said main entrance, and for some distance north and south preceding the departure and arrival of the various trains, omnibuses in which were brought and discharged from other passenger stations and hotels, passengers and baggage, which were permitted to wait by respondent for interstate passengers to arrive at said station destined for other railroads or other points in the City of Chicago. The remainder of the frontage of said station north and south of the main entrance, contains many openings for the reception and delivery of baggage. The entire width of Canal street for a distance of 300 feet north of Adams street, and 150 feet south of Adams street is in constant use by arriving and departing of passengers, and the public, and by the vehicles receiving and discharging passengers, baggage and freight. (Rec., 7, 8.)

Attempts were made in January, 1902, by the respondent, to occupy that part of Canal street in front of the entrances to its Union Depot and the sidewalk adjacent to said entrances, to the exclusions of petitioners, with omnibuses and employes of the Parmelee Transfer Company, during the arrival and departure of trains, to solicit and secure the custom of incoming passengers, to the exclusion of petitioners therefrom as such common carriers, and the respondent attempted, also, to prohibit the petitioners from entering the Union Station, and there soliciting the custom of

incoming passengers. The petitioners i[illegible]ted upon using the public sidewalk in front of the main entrance within the hack stand district, in numbers of from eight to twenty at a time, and also entering the Union Station in numbers of two and three at a time, for the purpose of soliciting the custom of incoming passengers as such common carriers. To prevent the petitioners from plying their calling in the street, upon the sidewalk and in the Union Station, the respondent appealed to the superintendent of the police of the City of Chicago, who refused to interfere, upon the advice of the corporation counsel of said city that the petitioners as such licensees of the city, "had full legal right and authority to congregate in front of" said passenger station (Rec., 11, 12), and to ply their several business as aforesaid, and to enter said passenger station and there ply their business at said station, and upon the sidewalk and street abutting said main entrance. Thereupon respondent caused prosecutions to be instituted against petitioners who entered its passenger station without its consent, and upon trials, petitioners were acquitted. (Rec., 73, 74, 78.)

Respondent on the 27th day of February, 1902, sought the protection of a court of equity in the enforcement of its said arrangement for the management and control of the incoming passengers at its Union Passenger Station, and the entrances thereto, and the use of the public sidewalk and public street of the City of Chicago abutting said station, and the carrying of passengers and baggage belonging to passengers arriving and departing from said station, and to discriminate against petitioners, and divert said

traffic and business to the Parmelee Transfer Company, and filed its bill in equity in the United States Circuit Court, and sought to enjoin the petitioners from entering its Union Passenger Station for the purpose of soliciting the custom of incoming passengers for their cabs, carriages, express wagons or hotels, and from occupying the sidewalk and street abutting the main entrance to said Union Station, for the purpose of soliciting the custom of passengers for their cabs, carriages, express wagons or hotels, and from interfering with, and soliciting the custom of any of the passengers upon the sidewalks adjoining said station, at the main or any other entrance of said station. (Rec., 14.)

Petitioners in their answer to the bill filed by respondent, alleged that they were duly licensed by the City of Chicago as such cabmen and common carriers, and had complied with the laws and ordinances relating to their said business, and denied that the matter in dispute exceeded the sum of $2,000, exclusive of interest and cost, and denied that the controversy arose under the Constitution and laws of the United States, and contended that The Parmelee Transfer Company's vehicles always stand on Canal street right in front of the main entrance of said Union Station, in numbers from six to ten at a time, to meet all trains, and most of the day take up that part of the street adjoining the sidewalk opposite the main entrance, rendering it impossible for petitioners with their cabs or carriages to use the same, and petitioners denied that they obstructed or interfered with any of the passengers at said depot who sought exits from the same. (Rec., 70-77.)

Petitioners denied the power and right and authority of the respondent to engage in the business of running cabs and carriages or hacks for carrying passengers to and from hotels, private residences and depots in the City of Chicago. They contended that the respondent entered into an unlawful agreement with Eighme and with his successor. The Parmlee Transfer Company, for the purpose of creating and maintaining a monopoly, and destroying the business of petitioners, and that respondent agreed with Eighme and with his successor that they should solicit inside of the main entrance of respondent's passenger station the custom of incoming passengers for cabs and carriages and express wagons, and that all other cabmen, carriagemen and expressmen should be kept out of said station by the respondent, and away from the entrances thereto, so as to give said Eighme and his successor a monopoly of said business in said place, that the exercise of such power was unauthorized by law. That prior to said agreement, all licensed cabmen, carriagemen and expressmen in Chicago had been accorded equal privileges at said depot by respondent, but after making said unlawful agreement, respondent refused to permit petitioners or any other licensees of the City of Chicago to stand inside or outside of said depot, near the entrance thereto, upon the street or sidewalk, and solicit business, but permitted and kept inside of his depot an employe of said Eighme and his successor, and permitted such employe in a loud voice to solicit business for cabs and carriages of incoming passengers, and that respondent unlawfully derived a share of the earnings of said business, and

its agents and officers as a consideration also, were given free cab and carriage service by Eighme and his successor. (Rec., 71-74.)

Petitioners further contended in their answer that respondent entered into an unlawful conspiracy with Eighme and with his successor to maintain a monopoly and to have its officers and agents obtain perquisites in such manner,—a crime under the laws of Illinois, and that the respondent in connection with the Parmelee Transfer Company, were trying to destroy the business of petitioners in the City of Chicago, and denied that they were guilty of extortion or of committing any nuisance about said depot. (Rec., 73-75.)

The petitioners also contended that one of their number, Walter Owens, became a party to a suit in equity; brought by the respondent in February, 1896, against the said City of Chicago and its chief of police, in which were presented substantially, all of the important questions which are involved in this bill of complaint filed in the Circuit Court of the United States, and in which suit upon the trial, a judgment was entered by the Circuit Court of Cook County, Illinois, against the respondent, from which judgment the respondent appealed to the Supreme Court of the State of Illinois, and that all the questions now sought by respondent to be decided by the United States Circuit Court in this suit, were decided by the Supreme Court of the State of Illinois, adversely to respondent, and that the judgment of said Supreme Court of the State of Illinois, stands unreversed in full force and is binding upon the respondent in this state. (Rec., 76-78, 82-109.)

At the hearing of a motion for a preliminary injunction, July 17, 1902, there was then filed and submitted by consent a general ordinance of the City of Chicago, of which the portions of Section 498 (adopted December 31, 1885) involved, are as follows (Rec., 160-162):

"Any duly licensed hackney coach, cab or other vehicle for the conveyance of passengers, may stand, while waiting for employment, at any of the following places, and for the period of time hereinafter provided.

"Stand No. 4. The east side of Canal street, occupying one hundred and ten feet between Adams and Madison streets, as the superintendent of police may direct."

"Stand No. 6. At all railroad depots ten minutes previous to the arrival of all passenger trains."

"Section 503. (Duty of Police.) It shall be the duty of the several officers and members of the police department to see that all the ordinances regulating hackney coaches, cabs, and all other vehicles for the conveyance of persons for hire, are strictly complied with, and any policeman shall have power and authority to order away from the stands, and from all other places, any hackney coach, carriage or cab not provided with a number or with lamps fixed up, lighted and numbered, as hereinbefore required, or not furnished with proper and suitable harness or horses, or whenever the same shall be improperly obstructing the way or street, or whenever the horses attached thereto are unruly, or whenever the driver or person having charge of any such hackney coach, carriage or cab is intoxicated, or in any manner misbehaves himself. If any person having charge of such hackney coach, carriage or cab, shall refuse or neglect to obey any such order, he or they shall forfeit and pay for every such offense the sum of five dollars, to be recovered from the owner or driver of such hackney coach, carriage or cab, severally and respectively."

The United States Circuit Court, on July 17, 1902,

nunc pro tunc as of June 6, 1902, granted a preliminary injunction in accordance with the prayer of the bill of complaint. (Rec., 165-166.)

The petitioners appealed from said order to the United States Circuit Court of Appeals for the Seventh Circuit, in which court, as of the October term, 1902, the cause was heard on appeal and the order was modified. (Rec., 179-180.)

Upon the mandate of the United Circuit Court of Apeals being filed in the United States Circuit Court, March 19, 1903, the cause was heard upon the bill of complaint, the answer thereto and exhibits, the replication to said answer, the said ordinance, and the affidavits filed in support of the bill and in support of the answer, upon the agreement of counsel for the respective parties that said affidavits should be taken as the testimony offered (Rec., 187-189), and the United States Circuit Court on April 3, 1903, entered a decree finding:

"That it has jurisdiction of the parties and of the subject-matter of this cause, and that all the material allegations of said bill of complaint are true; that the equities of this cause are with the complainant, and that the complainant is entitled to the relief prayed for in its bill of complaint and to have the temporary injunction heretofore issued in this cause made permanent; that the defendants, or some of them, at the time of the filing of the bill therein, and for some weeks prior thereto, did daily enter the Union Passenger Station of complainant, for the purpose of soliciting the custom of incoming passengers for cabs, hacks and carriages, and did in said station solicit the custom of such incoming passengers against complainant's protests, and that the defendants at the time of the filing of the bill herein, and for some weeks prior

thereto, did daily congregate in numbers of eight to twenty at a time, upon the sidewalk in front of, adjacent to and about the main entrance of complainant's railway station, situate at the corner of Canal and Adams streets, in the City of Chicago, against complainant's objections, for the purpose of soliciting, and did there daily solicit the custom of incoming passengers for their cabs, carriages, express wagons and hotels, and thereby did interfere with the ingress and egress of passengers and employes of complainant, to and from said station."

The United States Circuit Court in upon the foregoing findings, adjudged and decreed that the said defendants, Harry Donovan, * * * "and each of them, their agents and servants, and all persons claiming to act under their or each of their authority, direction or control, or to whom notice of this decree shall come, be, and they are, hereby perpetually enjoined from entering the passenger station of complainant, at the corner of Adams and Canal streets, in the City of Chicago, to solicit the custom of incoming passengers for cabs, carriages, express wagons or hotels, and be, and they are, hereby pe tually enjoined from soliciting the custom of passengers for cabs, carriages, express wagons and hotels in said complainant's said passenger station, and be, and they are, hereby further perpetually enjoined from congregating upon the sidewalk in front of, adjacent to or about the main entrance of complainant's said passenger station, in Chicago, and from their soliciting the custom of passengers so as to interfere with the ingress and egress of passengers and employes of said complainant."

"It is further ordered that the defendants do pay all the costs in this case to be taxed by the clerk, and

that the clerk issue execution therefor against the said defendants."

"Which said decree is entered without prejudice to the rights of defendants, or any of them, to take an appeal therefrom or sue out writ of error or certiorari to have this cause reviewed by the Circuit Court of Appeals in and for the Seventh Circuit, or, by the Supreme Court of the United States."

Petitioners appealed from said final decree to the United States Circuit Court of Appeals for the Seventh Circuit, and on the 13th day of May, 1903, the appeal having prior thereto been fully perfected, the United Circuit Court of Appeals for the Seventh Circuit, adjudged and decreed:

"That the decree of the said Circuit Court in this cause be, and the same is, hereby affirmed with costs." (Rec., 219.)

The errors assigned upon the record filed in the United States Circuit Court, and relied upon by petioners, are:

(1) The bill of complaint, upon which said order and decree is based, and the allegations therein are not sufficient to support said decree, * * * and the said decree is contrary to law and equity, and against the weight of testimony.

(2) The said decree directly destroys said business of petitioners, as such public and common carriers, and unjustly and unlawfully discriminates against them and each of them, and thereby deprives them and each of them of their property and equal rights in law, contrary to the law of the land, and contrary to public policy.

(3) The decree gives and grants to respondent and its employes rights and privileges upon and over the

sidewalk and public street belonging to and in the City of Chicago, in front of and adjacent to the entrance to the passenger station of respondent, to the exclusion of petitioners, and each of them, as citizens of said city and of the State of Illinois, and discriminates against them and each of them as public common carriers in violation of their rights as such citizens and public common carriers, in common with the other citizens of the State of Illinois, held by them and vested in them, under and by virtue of the ordinances of the City of Chicago and Constitution and laws of the State of Illinois, and the Constitution of the United States of America, and thereby discriminates unjustly and unlawfully in favor of the respondent and the employes of respondent, and those holding contractual relations with the respondent.

(4) The decree transcends the power and authority vested in said United States Circuit Court, inasmuch as it annuls and renders inoperative the ordinances of the City of Chicago and the laws of the State of Illinois lawfully and properly enacted under and by virtue of which vested legal rights were given, possessed and exercised by petitioners, and each of them, as citizens of said City of Chicago and State of Illinois as public common carriers of passengers and baggage for hire in said city, and unlawfully discriminates in favor of respondent against petitioners, and each of them, contrary to the law of the land.

(5) Said decree protects the respondent in unlawfully making and enforcing arbitrary rules and regulations, discriminating against petitioners, and each of them, as common carriers of passengers and baggage

in said City of Chicago, by which respondent designates what portion of the sidewalk, and what portion of the public street belonging to the City of Chicago, adjacent to said passenger station occupied by hackmen, cabmen and expressmen, and cabs, carriages and express wagons of respondent, for the purpose of soliciting passengers and baggage to be carried to and from said passenger station, and by whom and by whose property said portions of said sidewalk and street may be so occupied, contrary to the ordinances of the City of Chicago and the laws of the State of Illinois, and thereby creates and secures to respondent and those in the employ of respondent, or sustaining contractual relations to respondent, exclusive privilege and monopoly of the carrying of passengers and baggage for hire, from and to said passenger station.

(6) By said decree the petitioners, and each of them, are restrained and prohibited from pursuing their avocation and business as common carriers of passengers and baggage to and from said passenger station of the respondent in the City of Chicago, and are deprived of the right of carrying passengers and baggage to and from said station destined and in transit to and from points wholly within the State of Illinois, and the carrying of passengers and baggage from said station to points wholly within the City of Chicago.

(7) That the proofs heard by the court established and proved matters purely local at said City of Chicago, and did not embrace or establish matters pertaining to or belonging to the business of interstate commerce or the carrying of interstate passengers and

baggage, and the exercises of jurisdiction by said United States Circuit Court in the premises, was not warranted or authorized by the laws of Congress or the Constitution of the United States, and said court was wholly without jurisdiction under the laws of Congress and the Constitution of the United States to grant and enter said decree against petitioners.

(8) Said court erred in not dismissing the bill of complaint herein upon the final hearing thereof for want of jurisdiction of the subject-matters involved, inasmuch as no damages to the extent of $2,000 or any other sum was shown by respondent.

(10) The respondent had an adequate remedy at law.

(11) In holding that the respondent had the right to make arbitrary rules discriminating as to who may occupy a stand for hacks and cabs at and within respondent's depot as common carriers of passengers and baggage.

(12) In finding and holding both upon the law and facts that respondent could give an exclusive privilege to one common carrier in its depot and exclude other common carriers therefrom, thereby creating a monopoly in violation of law and equity and against public policy.

(13) The decree in effect regulates the business of common carriers in the City of Chicago, whose business is regulated by the ordinance of the City of Chicago, and who is under immediate control and supervision of the police power of the City of Chicago.

(14) In restraining the use of the sidewalk and street by petitioners, the use and occupancy of the street being under the immediate control and supervision of the city council.

BRIEF AND ARGUMENT OF PETITIONERS.

The questions of law involved and arising on the bill of complaint, answer, evidence and final decree theeron are:

1. Has the respondent a right, under our laws, to an injunctional order restraining petitioners from plying their vocation on the street and sidewalk in front of its station?

2. Has the respondent a right, under our laws, to an injunctional order restraining petitioners from entering respondent's depot, and soliciting passengers and baggage for their vehicles at a point or place therein designated by respondent as a place for the agents and solicitors of the Parmelee Transfer Company to stand and solicit passengers and baggage for its vehicles, or, having created a hack stand within its depot, is it not open to all hack and cabmen, without discrimination?

3. Can the respondent create within its depot a hack stand, and lawfully give the exclusive privilege to one hackman or line of hacks, and by granting the privilege to one, has it not waived its right to exclude other hackmen?

4. Can respondent lawfully create and maintain a monopoly at and in its station in the carriage of passengers and baggage.

5. Courts of equity will not assist in the creation and maintenance of a monopoly and indirectly uphold unlawful contracts.

Hotel runners are not common carriers and their rights will not be discussed here, but cab, hack and express men are common carriers and what we have to say will be confined to the rights of hackmen, cabmen and expressmen—common carriers. The term hackman, cabman and carriage man in many respects being synonymous. The proofs in this suit show that only hackmen in number from one to two go into the depot at any one time and solicit passengers and baggage for their vehicles, the others remain outside on the hack stand and upon the sidewalk and street and ply their vocation there. In this suit the respondent seeks to enjoin the hackmen who go in the depot and stand at a point, within the said depot and solicit passengers and baggage for their vehicles, designated by the respondent as a place for the agents of the Parmelee Transfer Company to stand and solicit passengers and baggage for its vehicles, who arrive on incoming passenger trains. Also to enjoin petitioners from plying their vocation upon the sidewalk and street in front of said station and about its entrances.

The respondent contends that the one and two hackmen who go into the depot and stand at the point designated by respondent as a place for the agents and drivers of the Parmelee Company to stand and solicit passenger and baggage for its busses and carriages, and that the said one and two hackmen, have no right to there stand and solicit at this point passengers and baggage for their vehicles, and that hackmen and expressmen have no right to stand upon the sidewalk and street about the main entrance to said station and solicit patronage for their vehicles,

and that they should be enjoined from so doing, as it desires to give the exclusive privilege to the Parmelee Transfer Company to solicit passengers and baggage for its busses and carriages, and for valuable consideration, of all incoming passengers upon all trains arriving at the said station, within the said station, about the main entrance of the said station and upon the sidewalk and street in front of said station, and about its entrances, to the exclusion of these petitioners and also other persons engaged as common carriers of passengers and baggage, and that they have entered into a contract with the Parmelee Transfer Company similar to the one they had with Eighne.

In this case the respondent is seeking to give the Parmelee Company the exclusive privilege within its depot and upon the sidewalk and street in front of the station, to solicit passengers and baggage for the Parmelee vehicles. In so doing it is attempting to exclude the one or two hackmen who go into the depot from the depot, and is also attempting to appropriate a portion of the public street to its private use and the use of the Parmelee Company, to the exclusion of all others who seek to stand at the above places and solicit patronage for their vehicles. In so doing it is attempting to create a monopoly and control the transportation of passengers and baggage beyond its terminus.

Petitioners' hackmen, and expressmen are licensed hackmen and expressmen of the City of Chicago, and are common carriers of passengers and baggage and of express. The hackmen and expressmen are carrying on their vocation under the ordinances of the City

of Chicago, and they are governed by the municipal law of Chicago.

Article V, Chapter 24, of Hurd's Statutes of Illinois, p. 62, section 1, provides:

"The city council in cities and the president of the board of trustees in villages shall have the following power:

Clause 9: To regulate the use of streets.

Clause 42: To license, tax and regulate hackmen, omnibus drivers, carters, cabmen, porters, expressmen and all others pursuing like occupation, and to prescribe their compensation."

These powers must be exercised by ordinances, and cannot be delegated to another, and the use of the streets of a city, however, whether for vehicles drawn by animals or footmen or the passage of cars, must be for the public.

No corporation or individual can acquire an exclusive right to their use for merely private purposes, and the ordinance must be reasonable, not oppressive, or such as will create a monoply or grant special privileges or are in their nature class legislation, and must not be against public policy; if so, they are void. The ordinances must operate impartially, and they cannot discriminate between the same class and that they must be uniform and apply to all alike.

Trotter v. *City of Chicago*, 33 App., 206.
City of Chicago v. *Trotter*, 136 Ill., 430.
Chicago Dock Company v. *Garrity*, 115 Ill., 155.
Tugmen v. *City of Chicago*, 78 Ill., 405.
City of Chicago v. *Rumpff*, 45 Ill., 90.

City of Kinmundy v. *Mahan, et al,* 72 Ill., 462.

City of East St. Louis v. *Wehrung,* 50 Ill., 28.

Danville v. *Noone,* 103 Ill. App., 290.

The City of Chicago, in the exercise of its legislative powers relating to hackmen and in the creation of hack stands, have provided by ordinances, The Revised Code of the City of Chicago, Sec. 498:

"Any duly licensed hackney coach, cab or other vehicle, for the conveyance of passengers, may stand while waiting for employment, at the following places, and for the period time hereafter provided:

Stand No. 4, on the east side of Canal street, occupying 110 feet between Adams and Madison streets, as the superintendent of the police shall direct;

Stand No. 6, at all railroad depots ten minutes previous to the arrival of all passenger trains," etc., etc. (Rec., 160, 161.)

We call the court's attention to the above facts and citations to show that the fee of the streets is in the City of Chicago, and under the control and supervision of the City of Chicago, and also that the occupations of hackmen, expressmen and hotel runners are under the immediate control and supervision of the City of Chicago, and that it is exclusively within its power to regulate and control these occupations, and that the writ of injunction should not be used to regulate the use of these streets and the business of the petitioners where these are regulated by law. Or in other words the writ of injunction should not be converted into a legislative measure regulating the use of the streets and the occupations of the petitioners.

In the case of *Lindsey* v. *Anniston,* book 27, p. 436,

L. R. A., is a case where an ordinance requiring hackmen to keep outside of a railroad depot while trains are there and leave a clear passage way at the entrance cannot be limited in operation by prior contract by which the railroad company has "so far as it is lawful," granted to a hackman the exclusive right to enter the depot and trains for soliciting passengers. The defendant went within the depot for the purpose of soliciting patronage for the transfer company by which he was employed, claiming the right to do so by reason of the contract between such transfer company and railroad companies, which provided that the transfer company should have the exclusive right to enter upon the premises and trains of the companies for the sole purpose of soliciting such business.

The defendant was convicted for violating the said ordinance and the conviction sustained the court, holding that the city having authority to regulate the business of hackmen and confine the business to certain localities and to prescribe the manner of carrying on such occupation, and it will be presumed to be reasonable unless the contrary appears on the face of the ordinance itself and a valid exercise of its police power. It further holds that every citizen holds his property subject to the proper exercise of this power either by the state legislature directly or by the public corporations to which the legislature may delegate it, and all rights are held subject to the police regulations, and when one devotes his property to a use in which the public has an interest he in effect grants the public an interest in that use and must submit to be

controlled by the public for the common good. Constitutional provisions prohibiting the impairing of obligations and of contracts do not restrict the police power of the state. The contracts which the constitution protect are those which relate to property rights not governmental. From the holding of the court in this case it is clear that section 498 and clause 6 thereof, which provides for a hack stand "*at all railroad depots ten minutes previous to the arrival of all passenger trains,*" is a legal and valid ordinance, and that these petitioners have a right, under this ordinance at all railroad depots in the city ten minutes previous to the arrival of all passenger trains for the purpose of soliciting passengers and baggage for their vehicles, and there can be no authority found to the contrary, and it is clear, that these men, when they go there with their vehicles ten minutes previous to the arrival of all passenger trains are there lawfully and carrying on their business in a legal and lawful manner as common carriers within the City of Chicago, they observing the ordinances of the city.

It is clear from the facts presented in the bill in this case and from the ordinance that petitioners are occupying the sidewalk and the street in front of the Union Passenger Station according to the ordinances and with the consent and acquiescence of the municipal authorities.

THIS BEING THE CASE THE USE OF THE STREET WITH THE CONSENT AND ACQUIESCENCE OF THE MUNICIPAL AUTHORITIES CANNOT BE ENJOINED AT THE SUIT OF AN ABUTTING PROPERTY OWNER.

Doane v. *The Lake Street Elevated R. R. Co.*, 165 Ill., 510.

Murphy v. *The City of Chicago*, 29th Ill., 279.

Stetson v. *Chicago & Evanston R. R. Co.*, 75th Ill., 74.

Petterson v. *Chicago & Vincennes R. R. Co.*, 75th Ill., 588.

Burlington & Quincy R. R. Co. v. *McGinniss*, 79th Ill., 269.

Peoria & Rock Island Co. v. *Shertz*, 84th Ill., 135.

Penn. L. Ins. Co. v. *Heiss*, 141 Ill., 35.

Cocoran v. *Chicago and Madison R. R. Co.*, 149th Ill., 291.

White v. *Elevated R. R. Co.*, 154th Ill., 620.

P. C. C. & St. L. Co. v. *Bachus*, 154 U. S., 421.

Truesdale v. *The Grape Sugar Company*, 101 Ill., 561.

Dunning v. *Aurora*, 40th Ill., 480.

Bliss v. *Kennedy*, 43rd Ill., 67.

White v. *Elevated Railroad Co.*, 154th Ill., 626.

County of Cook v. *G. W. R. R. Co.*, 119th Ill., 218.

Tibbets v. *W. & St. Ry. Co.*, 54th App., 108.

City of Chicago v. *Union Building Assn.*, 102nd Ill., 380.

Clark v. *Donaldson*, 104th Ill., 639.

Union Coal Co. v. *La Salle* 136th Ill., 119.

Hessing v. *Scott*, 107th Ill., 600.

Miller v. *City of Webster*, 62 N. W. Rep., 648.

The above citations apply to corporations as well as private individuals.

Gen. Electric R. R. Co. v. *Chicago St. R. R. Co.*, 66 Ill. App., 362.

In the *Pennsylvania Company et al.* v. *The City of Chicago, et al.*, 181 Ill., 289. In this case this respondent was the complainant there and sought to enjoin some of these petitioners from plying their vocation or the city officers permitting them to ply their vocation about the station, and the court there held:

"A railroad company could not enjoin the use of a street with the consent or acquiescence of the municipal authorities, and that the use of the streets cannot be enjoined at the suit of an abutting owner, nor can he invoke the remedy of injunction for the protection of the public and under that guise protect itself. That railroad depots in cities are in the nature of public buildings and the city council may establish hack stands in front of them," and would appear to be decisive of the question involved in this controversy insofar as it relates to streets and sidewalks.

Railway depots in Illinois, by law, are free to the public and subject to regulations prescribed by law.

By the Constitution and laws of the State of Illinois, all railways are made free public highways, and their

passenger depots, indispensable thresholds and entrances thereto.

Section 12, Article 2, Constitution of Illinois, ratified by the people July 2, 1870, and in force August 8, 1870, ordains, that:

"Railways heretofore constructed or that may hereafter be constructed in this state, are hereby declared public highways, and shall be free to all persons for the transportation of their persons and property thereon, under such regulations as may be prescribed by law." (Hurd's Statutes, 1901, p. 72.)

The General Assembly of Illinois "prescribed by law" that:

"Every railroad corporation in the state * * * shall at all junctions with other railroads, and at all depots where such railroad companies stop their trains regularly to receive and discharge passengers in cities and villages, for at least one-half hour before the arrival of, and one-half hour after the arrival of any passenger train, cause their respective depots to be opened for the reception of passengers; said depots to be kept well lighted and warm for the space of time aforesaid." (Hurd's Statutes 1901, p. 1385, Sec. 84.)

Also:

"That all railroads in this state carrying passengers or freight, shall, and they are, hereby required to build and maintain depots for the comfort of passengers and for the protection of shippers of freight, where such railroad companies are in the practice of receiving and delivering passengers and freight, at all towns and villages having a population of five hundred (500) or more, on the line of their roads, and roads leased or operated by them." (Hurd's Statutes, 1901, p. 1378, Sec. 50.)

And:

(Union Depot.) "The General Assembly shall have

power to enact from time to time, laws to prevent and correct abuses, and to prevent unjust discrimination and extortion in the management and prosecution of the business of any corporation formed under this act, and to enforce such laws by adequate penalties." (Hurd's Statutes, 1901, p. 1381, Par. 5, Sec. 59, Chapter 114.)

The General Assembly of Illinois, by clauses 9, 10, 14, 20, 42, 43, 66 and 96 of Section 62, Article 5, of the General Act for the incorporation of the cities and villages, in force July 1, 1872 (Hurd's Statutes, 1901, p. 285), delegated the authority to city councils in cities and empowered them, to regulate the use of streets, alleys, sidewalks and public places, prevent obstructions upon the same; regulate traffic and sales upon the streets, sidewalks and public places; license, tax and regulate hackmen, draymen, omnibus drivers, cabmen, porters, expressmen and all others pursuing like occupations, and to prescribe their compensation; to license, regulate, tax and restrain, runners for stages, cars, public houses, or other things, or persons; to regulate the police of the city, and pass and enforce all necessary police ordinances and rules, and make all regulations, proper or necessary to carry into effect the powers granted to cities or villages with such fines or penalties as the city council shall deem proper.

The City of Chicago, by a general law, uniform as to the class upon which it operates, in pursuance of the powers delegated to it by the General Assembly, "prescribed by law" (Sections 498-503, ordinances adopted December 31, 1885), "regulations" permitting "any duly licensed hackney coach, cab or other vehicle for

the conveyance of passengers, to stand while waiting for employment, * * * at all railroad depots, ten minutes previous to the arrival of all passenger trains."

The ordinances of the City of Chicago passed in pursuance of the authority delegated to it by the legislative department of the State of Illinois, have the effect of a statute passed by the General Assembly of Illinois, *N. O. Water Works*, v. *N. O.*, 164 U. S., 481.

The respondent in coming into the State of Illinois seeking to do business here, owes obedience to the Constitution and the laws of the state, and the ordinances of the City of Chicago, enacted in pursuance thereof, and is answerable according to the laws of the State of Illinois, and the ordinances of the City of Chicago, for acts of nonfeasance or of misfeasance committed in said city.

St. Louis v. *Western Union Tel. Co.*, 148 U. S., 102.

N. O. Water Works v. *N. O.*, 164 U. S., 481.

Chicago & Milwaukee Ry. Co., v. *Sloan*, 169 U. S., 137.

No legislative power is vested in respondent nor can it possess or exercise any such power in this state. The power it seeks to exercise and enforce, to wit, instituting "a partial hack service of its own" (Rec., p. 9), and regulate the use of the sidewalk and street in front of its Union Station, and regulate the business of cabmen, carriagemen and expressmen thereon, is what is termed police power, possessed only by the

legislative powers of the state. Corporations like individuals must appeal to the laws and "regulations prescribed by law", for the protection of their property and rights. They cannot make and enforce their own laws. The "regulations prescribed by law" contemplated by the Constitution, must be regulations prescribed and enacted by the law, making power of the state. A reference to Sec. 1, Art. 4, Ills. Con., discloses that this power is "vested in the General Assembly, which shall consist of a Senate and House of Representatives, both to be elected by the people."

If the respondent is permitted to exercise the powers asserted by it in this case, it would take unto itself a "special or exclusive privilege", and secure to its property and itself, an "immunity" not enjoyed by other corporations and individuals in the state, and which by Sec. 22, Art. 4, of the Ills. Con., the General Assembly of that state is prohibited from granting:

(Sec. 22.) "The General Assembly shall not pass local or special laws in any of the following enumerated cases, that is to say; for granting to any corporation, association or individual any special or exclusive privilege, immunity or franchise whatever."

To permit the respondent to exercise the power and privilege and enjoy an immunity denied to other common carriers, would be beyond the power of the General Assembly and in violation of Sec. 22, *supra.*

Noel v. *The People,* 127 Ill., 594.
Horwich v. *Walker, et al,* 205, Ill., 495.

The title to the sidewalks and the fee of the streets and control thereof, at the entrance to and abutting the Union Passenger Station of the Pennsylvania

Company, are vested exclusively in the City of Chicago, for public use.

Penn. Co. v. *City of Chicago*, 181 Ill., 296.
Barnes v. *Dist. of Col.*, 91 U. S., 547.

The respondent devotes its property to a use in which the public has an interest. It in effect grants to the public an interest in that use, and subjects its property to be controlled by such regulations as may be "prescribed by law," by the legislative authorities of the state and the City of Chicago, to whom is delegated by the state, the power and authority to enact and enforce such regulations.

Cutting v. *Kansas City Stock Yards Co.*, 183 U. S., 84.
Brass v. *Stoesser*, 153 U. S., 400.
Budd v. *New York*, 143 U. S., 531.
Munn v. *Illinois*, 94 U. S., 112.
I. C. R. R. Co. v. *Willenborg*, 117 Ill., 209.

The Pennsylvania Company could not lawfully under the constitution and laws of the State of Illinois, exclude from its Union Passenger Station in said city, cabmen and carriagemen duly licensed as such by the City of Chicago, and prohibit them from soliciting custom for their vehicles in said passenger station, such places being public highways, and free to all persons, and by contract bestow the privilege upon the Parmelee Transfer Company, denied by it to petitioners, and thereby "institute a partial hack service of its own" (Sec. 9), and discriminate against them, and build up a monoply in the business and directly or in-

directly derive a profit from the maintenance of said monopoly.

Hack and Buss Company v. *Sootsam*, 84 Mich,. 194.
The Union R. Co. v. *Langlois*, 9 Mont., 419.
McConnell and Pedigo v. *Hays*, 92 Ky., 465.
Union Co. v. *Dohn*, 153 Ind., 10.
Cravens v. *Rogers*, 101 Mo., 246.
Lindsay v. *Anniston*, 104 Alabama, 267.

The regulations adopted and sought to be enforced by respondent at its passenger station, in effect compels the incoming passengers to accept the Parmelee Transfer Company's omnibus or express wagons, and pay the charges which that company may demand, or go outside of the station and beyond the sidewalk and street adjacent to the entrances to the station, and to procure transportation for themselves and their baggage of the petitioners; or in case the passengers are intending to board a train of respondent in its station, in order to have their persons and baggage delivered at the entrance of said station, must engage a Parmelee Transfer Company omnibus, or consent to be put down at a great distance from the entrances to the station, in case they take a carriage of petitioners. Although the passenger is not here complaining, it is the effect of the enforcement of this rule upon the business of petitioners as common carriers that enables the respondent and its employee, the Parmelee Transfer Company, to create and maintain a monopoly of the passenger traffc to and from its station in the City of Chicago, and regulate the same in violation of

the constitution and laws of the state, and the ordinances of the City of Chicago.

The operation and effect of the perpetual injunction granted by the Circuit Court of the United States against petitioners, is to protect the Pennsylvania Company, in usurping from the City of Chicago, the control of the sidewalk and public street for its special benefit and profit, to the exclusion of the petitioners who are regularly licensed common carriers in the City of Chicago, and to enable the Parmelee Transfer Company as the employe of the Pennsylvania Company, to monopolize the use of the sidewalk and street, and business and profits derived from said monopoly, and to protect it in converting the street and the sidewalk abutting the entrance to the Union Passenger Station of the Pennsylvania Company and the said Union Passenger Station, from a public highway and public place, required to be free to all persons, into a private way for its exclusive employment, business and use, to the exclusion of, and discrimination against the petitioners and the public, contrary to the constitution of the State of Illinois and the laws of said state enacted in pursuance thereof, and the ordinance of the City of Chicago adopted by virtue of the powers delegated to and vested in the city council of the City of Chicago, thereby sanctioning discrimination in the business of a public carrier at a public place, and subjecting place to the purposes of such discrimination, preventing competition in said business, creating a monopoly in favor of the Pennsylvania Company and its employe, against the organic and statute laws of said state, and against public policy.

The perpetual injunction protects the Pennsylvania Company and its employe, the Parmelee Transfer Company, in maintaining a monopoly, in violation of the laws of the state, in the business of carrying passengers, and enables it to control the transportation of passengers and baggage beyond its Union Passenger Station and line, privileges and powers not permitted to be exercised by it, by the constitution and statute of the State of Illinois, and against public policy.

The respondent should not be permitted to go into a court of equity, and shield itself by the decree of a court, and ask the protection of such court in the performance of acts *ultra vires* in maintaining a monopoly in the business of a public carrier contrary to the constitution and laws of this state, and the public policy of the state, even where the state or public authorities have not interposed an objection to the exercise of acts *ultra vires* by the respondent. A court of equity is not open to the litigant whose acts are violations of law, and opposed to public policy and the organic and statute law of the state, and who seeks its sanction and aid to enforce a contract *ultra vires*, and maintain a monopoly. It will not grant such relief under such circumstances.

McConnell v. *Pedigo*, 92 Ky., 465.
Union R. Co. v. *Langlois*, 9 Mont., 419.
Ind. Ry. Co. v. *Dohn*, 153 Ind., 10.
Cravens v. *Rogers*, 101 Mo., 247.
Kalamazoo H. & B. Co. v. *Sootman*, 84 Mich., 194.

The relation of carrier and passenger is not involved in this case, nor is it exercised upon this record, but the exercise of police power and the authority to prevent and regulate monopolies and regulate sidewalks and traffic on the same are involved, attributes of state's sovereignty which belong exclusively to the state and its political subdivisions and agents.

United States v. *Knight*, 156 U. S., 11.
Barnes v. *District of Columbia*, 91 U. S., 547.
Slaughter House Cases, 16 Wallace, 63.
City of New York v. *Miln*, 11 Peters, 1139.

No violation of the law is found by the decree of the United States Circuit Court to have been committed by petitioners. The decree finds, first, That the petitioners did daily enter the Union Passenger Station of complainant, for the purpose of soliciting and did in said station solicit the custom of incoming passengers, for cabs, hacks and carriages, against the Pennsylvania Company's protests. Second, That the petitioners did daily congregate in numbers from 8 to 20 at a time upon the sidewalk in front of, adjacent to and about the main entrance of complainant's railway station, for the purpose of soliciting, and did there daily solicit, against the Pennsylvania Company's objections, custom of incoming passengers for their cabs, carriages, express wagons and hotels, and thereby did interfere with the ingress and egress of passengers and employes of the Pennsylvania Company, to and from said station.

The congregating of from eight to twenty on the sidewalk clearly twelve feet in width, and four hun-

dred and fifty feet in length, soliciting custom of the public, would scarcely interfere with the ingress to and egress from said passenger station by the passengers through the center and side openings of the main entrance, each being five feet in width, a total of fifteen feet, sufficient to justify the Pennsylvania Company insisting upon all of the eight to twenty men, being prohibited from congregating there, so that their places might be occupied by a sufficient number of the solicitors of the Parmelee Transfer Company to supply the demands of the passengers and public, made necessary by the removal of from eight to twenty of petitioners. If the capacity of the place and the demands of the public did not admit of from eight to twenty men congregating upon the sidewalk, then the decree should have found and determined what number the capacity of the place and the demands of the public required and justified, but it in effect leaves the Pennsylvania Company at liberty to permit the Parmelee Transfer Company to place upon said sidewalk a greater number of solicitors than twenty, and displace petitioners and solicit custom. It protects the Pennsylvania Company in doing just as it pleases in that respect. Not only within a building impressed by the constitution and statute laws of Illinois, with the character of a public highway, free to all persons, but upon a public sidewalk and street belonging to and within the control of the City of Chicago, contrary to the ordinances of the city and the laws of the state. If the decree in this case is upheld it is within the power of the corporations owning and controlling the five other depots, which are termini of

the great railways entering into Chicago, together with the Pennsylvania Company, to make a like contract with the Parmelee Transfer Company and establish a monopoly of the entire cab and carriage business and express business, in the City of Chicago, and drive all competitors out of business. The condition of things made possible and permitted by this decree is against public policy, contrary to the spirit and purposes of the laws, and we respectfully submit it violates every principle of equity, jurisprudence to foster and uphold it.

IF RESPONDENT IS INJURED, FOR WHICH IT HAS A RIGHT TO COMPLAIN, IT HAS AN ADEQUATE REMEDY AT LAW, AND WHERE RESPONDENT HAS AN ADEQUATE REMEDY AT LAW RELIEF IN EQUITY WILL NOT BE GRANTED.

Richards v. *Lake Shore & Ry. Co.*, 124 Ill., 516.
R. R. Co. v. *Drake*, 148 Ill., 226.
R. R. Co. v. *Scott*, 132 Ill., 429.
R. R. Co. v. *Robbins*, 159 Ill., 598.
Gault v. *R. R. Co.*, 157 Ill., 125.
Rigney v. *City of Chicago*, 102 Ill., 64.
R. R. Co. v. *Ayers*, 106 Ill., 511.
R. R. Co. v. *Reich*, 101 Ill., 157.
R. R. Co. v. *Stein*, 65 Ill., 75.
Ottawa G. L. Co. v. *Graham*, 28 Ill., 73.
R. R. Co. v. *Grabill*, 50 Ill., 242.

In *The Pennsylvania Company et. al.* v. *The City of Chciago et al.*, the court say:

"The remedy of one whose property is damaged by the establishment of a hack stand in front of it, under

the provisions of a municipal ordinance, is by action at law for damages to be determined by the jury without resort to the remedy by injunction."

WHERE THE RELIEF PRAYED FOR, IF GRANTED, WOULD BE OF GREAT INJURY TO THE PETITIONERS AND NOT OF A CORRESPONDING BENEFIT TO THE RESPONDENT, AN INJUNCTION WILL BE DENIED.

Pratt v. *N. Y. C. R. R. Co.*, 35 N. Y. Supp., 577.
Gray v. *R. R. Co.*, 126 N. Y., 509.
High on Injunction, 596.
H. H. Co. v. *Padell*, 5 Del., Ch. 435.
Fernes v. *R. R. Co.*, 121 N. Y., 505.
R. R. Co. v. *Adams*, 28 Fla., 656.
Ammerman v. *Dean*, 132 N. Y., 355.
Interstate Commerce Co. v. *R. R. Co.*, 64 Fed. Rep., 981.
Nason v. *Sanborn*, 45 N. H., 171.

Now with reference to another point in controversy upon which the decisions are not in harmony and upon which there is a conflict of opinion, there is one other point we wish to call the court's attention to, that is in harmony with all decisions and in which there is no conflict, *i. e.*,

THAT THE OUTSIDE FACILITIES AT A DEPOT MUST BE EQUAL, THAT THERE CAN BE NO PRIVILEGES SHOWN THERE.

Godbout v. *St. Paul Union Depot Co.*, Book 47, L. R. A., 532.

Now, with reference to the next question about which there is a conflict of authority, it is the question of the exclusive privileges being granted to one cabman or common carrier on the inside of a depot or of depot grounds to the exclusion of the others.

In Fetter on "Carriers of Passengers, Vol. 1, Sec. 245, p. 638," he says:

"By the weight of authority in this country a railroad company cannot legally give to one hack and omnibus company the right to use and occupancy a portion of its depot grounds to the exclusion of others engaged in the like business of the carriage of freight and passengers from its depots. To permit a railroad company to do so is against public policy, since it would be thereby enabled to control largely the transportation of passengers and merchandise beyond its own line, and would establish a monopoly not granted by its charter, which might be solely for its own benefit and not for the benefit of the public. Such a regulation also violates a constitutional or statutory prohibition against discriminations, in charges or facilities for transportation of freight and passengers."

A RAILROAD COMPANY OR DEPOT CANNOT MAKE ARBITRARY RULES DISCRIMINATING AS TO WHO MAY OCCUPY STANDS AS PROVIDED BY SUCH DEPOT, AND AS TO WHO SHALL SOLICIT PASSENGERS THEREFROM.

Ray on Passenger Carrier, Sections 113, 114, 115.

Fetter on Carriers of Passengers, Vol. 1, Sec. 245, p. 638.

Am. & Eng. Enc., 2nd Ed., Vol. 26, 505.

Montana Union Ry. Co. v. *Langlios,* 9 Mont., 419, 8 L. R. A., 753, and see note citing authorities.

Markham v. *Brown*, 8 N. H., 523.
Craven v. *Rogers*, 42 Am. & Eng. Ry. Cases, 656.
Kalamazoo H. & B. Co. v. *Sootsman*, 84 Mich., 194, Book 10, L. R. A., 819.
Craven v. *Rogers*, 110 Mo., 247.
Mariett v. *R. R. Co.*, I. C. B. (N. S.), 499.
In re Palmer v. *R. R.*, 6 C. P.
Camblos v. *Ry. Co.*, 9 Phil., 411.
Express Company v. *R. R. Co.*, 57 Me., 188.
Summitt v. *State*, 8 Lea, 413.
State of Mississippi v. *Reed*, 76 Miss., 211, 43 L. R. A., 134.
Indianapolis Union Railway Co. v. *Dohn*, 153 Ind., 10, 45 L. R. A., 427.
Lucas v. *Herbert*, 37 L. R. A., 376.
Cole v. *Rowen*, 13 L. R. A., 848.
McConnell v. *Pedigo & Hays*, 92 Ky., 465.
Pennsylvania Company v. *City of Chicago*, 181 Ill., 289.
Lindsey v. *Anniston, Ala.*, 27 L. R. A., 436.
Indian River S. B. Co. v. *East Cost Transpt. Co.*, 28 Fla., 387, 10 So., 480.

In the case of *Hack and Bus Company* v. *Sootsman*, 84 Michigan, 194, and 10 L. R. A., 819. In this case the Chicago, Kalamazoo and Saginaw Railroad Company, being in the occupancy of a piece of land used by it as depot grounds in the City of Kalamazoo, leased to the plaintiff operating a hack and bus line in said city and informed other hack and bus men generally that the ground and space had been leased exclusively to the hack and bus company and for the

plaintiff and all other hackmen to keep out of and off of the premises. The court held that the granting of this exclusive privilege to occupy this favored spot on the ground was a discrimination against the defendant as well as all other hackmen and busmen not in the employ or service of the plaintiff, thus giving to the plaintiff a monopoly of the railroad company's grounds for the standing of hacks and busses and the solicitation of passengers therefor.

The court further held that to grant the privilege to one hack and busman to the exclusion of others from its depots in soliciting passengers for their vehicles was a violation of the statute which provides that:

"All railroad corporations shall grant equal facilities for the transportation of passengers and freight to all persons, companies or corporations. The access to its depots must be free and equal to all, whether it be to take passage or to leave the train, no railroad company would be permitted, under this statute, to give one hack and bus company exclusive or even better access to its depots than to others in the carriage of passengers or freight to its trains, nor can it any more appropriately give such exclusive or better privilege to such company taking passengers or freight from its trains to be transported from thence elsewhere."

The court further says:

"But independently of the statute upon principle, the plaintiff could not recover in this case. A railroad company can make all needful, reasonable rules and regulations concerning the use of its depots and grounds and can exclude all persons therefrom who have no business with the railroad or passengers going to and coming from the trains or depots, and it probably can prohibit all persons from soliciting busi-

ness for themselves upon its premises; but it cannot, arbitrarily, admit one common carrier of passengers or freight to its depot or grounds and exclude all others for no other reason than it is for its own profit or pleasure. Such rules or regulations must touch and effect all alike. It may determine the distance from its depot or track at which persons soliciting passengers may stand while on its grounds, but this determination must affect and apply to all. To permit a railroad company upon any pretense except of wrong or misconduct on the part of the persons excluded, to allow one hackman or line of hacks to occupy a place upon its grounds which is denied to another, or to set apart the most favorable ground, as in this case, to one company and to exclude the others therefrom, would be to enable a railroad corporation largely to control the transportation of passengers and merchandise beyond its own line, and to establish a monopoly not granted by its charter which might be solely for its own benefit, and not for the benefit of the public."

In the case of *The Union Railroad Company* v. *Langlois*, 9th Mont., 419, and 8 L. R. A., 753, the court held:

"The exclusive right to use the platform of a railroad company for receiving and discharging passengers cannot be granted by the company to one hack owner. In this case the railroad company sought to give the exclusive use of its depot grounds to Lovell Bros. and was an action for an injunction brought by the railroad company against the defendant, in which the bill, answer and stipulated facts showed that the railroad company had contracted with Lovell Bros., by which contract they were to carry the mail for the railway company from its station to the postoffice, in consideration of which they were to have the exclusive use of certain grounds belonging to the complainant which it had enclosed. The defendant had insisted in driving his wagon and busses into said lands and leaving them standing on the ground, the exclusive use of which had been granted to the said Lovell Bros. The

court on hearing dissolved the temporary injunction granted and based their reason for so doing on the ground that to permit the injunction to stand restraining other cab drivers than Lovell Bros., to whom the exclusive use had been given, from using the depot grounds while waiting for employment would aid in causing a monopoly, destroy just competition and cause thereby a hardship not only on other cab drivers, but on the general public."

The court further say:

"If the plaintiff has the right to grant the exclusive use of the said plaform to one and exclude the public hackmen therefrom, it would apparently have the right to exclude the private hackmen therefrom. To the strong it would perhaps make no difference, as a matter of convenience, just where they were landed at or received from said station; but to the feeble and to the helpless, and those incumbered with their care, it would be a matter of great discomfiture and inconvenience, still other conditions which directly result from the position demanded by plaintiff, and which militate against the equal rights of passengers, may be suggested. Suppose all other hackmen who desire to compete with Lovell Bros. for the carrying of passengers to and from this depot will perform the service for half the sum charged by Lovell Bros., are the passengers entitled to the benefit of this competition? Has not the passenger the right to call these other hackmen to his service, and if he does call them, has he not the right to have such other hackmen approach the platform at the same place, or at least have an equal and common chance to approach at this same convenient place, as his co-passengers who employs Lovell Bros.? If any of the passengers do accept these better terms, they must suffer the discrimination of being denied a landing at that portion of the platform granted exclusively to Lovell Bros., or, when they alight from plaintiff's trains, they either go fifty feet away from that portion of said platform, or to the east side of the depot building,

for transportation with a hackmen at a less rate. It is a rule of universal application that the public is entitled to whatever competition may grow out of the public demands, on the one hand, and the contest of others to supply such demands, and receive the compensation therefor. Are not the conditions here sought to be so controlled by the plaintiff as to stifle the natural development of such competition?"

In the case of *McConnell* v. *Pedigo & Hays*, 92 Ky., 465, this was a case in which a contract similar to that in the case last above cited had been entered into between the railroad company and McConnell, by which an exclusive privilege was sought to be given to him upon consideration that he would carry the mails for the company. McConnell sought to maintain this right by applying to the court for an injunction to protect him in his exclusive privilege, and to exclude others from competing with him at the railroad station and on its ground in the solicitation of passengers and baggage for his vehicles. The court denied his right to the writ of injunction which he sought, holding that he was not entitled to an injunction to enable him to monopolize the carrying trade at that point.

In the case of the *Indianapolis Union Railway Company* v. *Dohn*, 45 L. R. A., 427. This was a suit to enjoin the appellee from entering upon the station grounds of the appellant to solicit customers for his hack. The appellant is a corporation composed of various railway companies in control of the Union Station at Indianapolis. The appellee is the driver of a public conveyance, commonly called a hack, engaged in the business of transporting persons without dis-

cimination from place to place in and about Indianapolis. The court in that case say:

"The Union Passenger Station at Indianapolis acquired its ground partly by condemnation and partly by purchase. The station building faces north, the tracks are south on the building of the train shed. At the north end of the buildings is an open area, bounded on the north by Jackson Place street, on the east by McCrea street, on the south by the station building and on the west by Illinois street. The distance from Jackson Place street to the station building is sixty-seven feet. Along the north line of the building is a sidewalk sixteen feet wide. The residue of the area is paved and is used as a driveway to and from the entrance, which is at the center of the north front. The railway company, by contract, undertook to give the Frank Baird Transfer Company the exclusive right to stand hacks in the area and solicit business of persons leaving the station. Employes of the transfer company were accustomed to stand their hacks upon the area at all hours of day and night, and for such length of time as they pleased. Intending passengers were allowed to alight at the entrance of the station building from private conveyances or from public ones that had been employed to bring them there. Arriving passengers were permitted to be met at the entrances by their private conveyances or by public ones previously engaged to meet them. All other vehicles except the transfer company were excluded from the area."

The court denied the writ of injunction and the relief prayed for by the railroad company, and held:

"A grant by a railroad company of the exclusive right to stand hacks on the area owned by it adjacent to a passenger station for the purpose of soliciting business, is unlawful, as the company, which acquires its grounds through the sovereign right of eminent domain, whether by purchase or by condemnation, cannot grant special privileges and immunities that the

state could not; and such action is also against public policy as tending to restrict competition and enhance prices.

The payment by passengers for transportation includes payment for the common use of the station facilities, and entitles them to have the railroad company refrain from coercing them into yielding further tribute by giving an exclusive right to a hackman to solicit their business as they leave the station."

The court also said in this case, after reviewing the cases upon the subject-matter involved in this litigation:

"That the majority of the English cases appear to sustain and the majority of the American cases to deny the right of a railroad company to grant such an exclusive privilege."

The court also held:

"That the petitioners sought from a court of equity the extraordinary remedy of injunction."

It failed to show any ground for equitable interposition.

In the case of the *State of Mississippi* v. *Reed*, 43 L. R. A., 134, Reed was arrested for trespassing upon the private premises belonging to the Alabama and Vicksburg Railroad Company and was, before the justice of the peace, tried and convicted. He appealed to the Circuit Court and was there tried upon an agreed state of facts and acquitted, and the state took the case to the Supreme Court. From the agreed state of facts the depot of the railroad company in the City of Vicksburg is surrounded by a fence and that there is a considerable inclosure of ground adjacent thereto. Within said inclosure, around the depot, is the most convenient and the best place for hack and 'bus men

to discharge, solicit and receive passengers, departing and arriving on the passenger trains of said company, and that any hackman or 'busman who had the exclusive privilege of entering this inclosure and soliciting passengers there would have an advantage over hackmen and 'busmen excluded therefrom, so far as passengers arriving on said trains were concerned. That the railroad company granted in June, 1894, the exclusive privilege of entering said inclosure and soliciting passengers therein to said Peine, and that Peine was a person engaged in the hack, 'bus and general transfer business in Vicksburg, and that after said exclusive grant to Peine all other hackmen and 'busmen were excluded from entering said inclosure for the purpose of soliciting passengers therein and were notified not to enter said inclosure for that purpose under threat of being prosecuted as trespassers; and that the appellee, Reed, having been notified not to enter said inclosure for such purpose, drove his hack into the inclosure and while there solicited and received the passenger, and then drove away, and in so doing this he created a disturbance or disorder; that Cherry street is about 150 feet from the depot and that from the depot to Cherry street, where hacks other than Peine's can stand, there is a good sidewalk. In a word, Peine's hacks have the exclusive privilege of entering the inclosure surrounding the depot and soliciting incoming passengers, while all other hacks are excluded from the inclosure surrounding the depot and soliciting incoming passengers, while all other hacks are excluded from the inclosure and must stand outside and about 150 feet from the depot and in the open street.

The court say:

"The single issue is thus sharply defined, viz:. Has a railroad the right to confer upon one hackman the exclusive privilege of entering with his hacks its inclosed station grounds and of soliciting incoming passengers and to exclude all others from the inclosure, such privilege conferring advantages upon the favored hackman and discriminating against all other hackmen by forbidding them to enter the inclosure to solicit passengers and by placing the hacks of those excluded 150 feet from the depot in the open street?"

And the court then held:

"A railroad company has no right to give one hackman an exclusive privilege of entering with his hack its enclosed station grounds to solicit passengers, and that the railroad company had no right to exclude Reed from its depot and enclosed grounds, and held that the action of the court below in discharging Reed was correct."

In the case of *Cravens* v. *Rogers*, 101 Mo., 247. This was a case where the Rock Island Railway Company sought to give an exclusive privilege and use of its depot plaform to one hackman to the exclusion of other hackmen. The court held that the railroad company could not give the exclusive use of the more convenient and accessible portion of the platform to one 'bus line to the exclusion of others, even if the owner had at his expense constructed an addition to the platform for such use.

The court say:

"On the other hand, if better facilities are afforded to one carrier than another by the connecting carrier (that is, the railroad company), competition is discouraged, a monopoly created and the traveling public are apt to receive slow, uncomfortable, slovenly,

negligent and expensive service. Monopolies are obnoxious to the spirit of our laws and ought to be discouraged."

In the case of the *Pennsylvania Company* v. *The City of Chicago*, 181 Ill., 289, the court say:

"It appears from the record that certain property owned by the complainants and adjacent to the depot was leased to one Leroy Eighme, for use as a hack stand, and that the lessee, by using the property and excluding others therefrom would have privileges of access to the depot and of carrying passengers which others would not have. While we recognize that the companies which control the depot grounds and buildings make needful rules for their regulation, yet they cannot grant special privileges beyond the limits of their own land and make a contract with one which gives him the right to carry passengers from their depot beyond their own lines and exclude others from such privilege of carriage. If such companies control the transportation of passengers and merchandise beyond their own line, such power must be exercised solely for their own benefit, and not for that of the public. They cannot make a rule under which certain persons are allowed to occupy the streets and control travel and exclude others therefrom regardless of any wrongdoing or misconduct on the part of the person so excluded. Any attempt to exercise a power of that character would be unreasonable and unauthorized under the law."

And citing with approval the holding of the courts heretofore cited, to wit: The Supreme Court of Montana, Michigan, Tennessee, Kentucky, Mississcippi, Missouri, Indiana and Alabama. These cases are all directly in point, and cases that touch directly upon the right as to whether railroad companies can give a portion of their station grounds or permit a portion of their station grounds to be used by one

common carrier in his business to the exclusion of others and bears directly upon the rights and privileges of those engaged exclusively in the carriage of passengers and baggage as common carriers and for hire. The bill in the above case, the answer of the defendant hereto and the replication of the complainant to the answer fully presented the question to the Supreme Court of this state for its judicial determination as to whether or not a railroad company doing business in this state and in control of the Union Passenger Station in this city had a right to grant to one hackman the exclusive right and privilege of occupying its depot grounds to the exclusion of other hackmen in receiving passengers and baggage on incoming trains arriving at said station, and the court held that it was contrary to law, and a contract of that character void and against public policy and that this is the law of this state at this time.

The respondent herein claims the right of free and uninterrupted ingress and egress through such main entrance without being obstructed by throngs of cabmen and expressmen therein plying their trade.

There is no proof before this court that the main entrance to the Union Passenger Station inside the doors is in any way obstructed by throngs of cabmen or expressmen plying their trade there. Upon that point the proof in this case is this: That there is not at any one time more than one or two hackmen or cabmen within the station at the point designated by the appellee for the agents of the Parmelee Transfer Company to stand in said entrance in said station and solicit passengers for the Parmelee Transfer Com-

pany's carriages; that these hackmen who go into the depot stand at a point designated by the railroad company for the Parmelee agents to stand and there solicit passengers and baggage for their vehicles in a lawful, peaceable and gentlemanly manner; that no expressmen going into the said depot at the main entrance or any other part of the depot grounds and wait for employment and solicit express or baggage for their vehicles, and that none of the hotel runners go into the said depot and ply their vocation there; that of the petitioners to this suit not to exceed two enter the depot at any one time and solicit passengers for their hacks and cabs; that the other petitioners, all the expressmen and hotel runners, ply their vocation upon the street and sidewalk in front of the Union Passenger Station; that there is no obstruction within the main entrance to and from the said station except the obstruction of the agents of the Parmelee Company, who stand within the main entrance and solicit passengers and baggage from the incoming passengers for the Parmelee Company; and that the agents number from two to three at a time in plying their vocation there in the interests of the Parmelee Company; and that these agents of the Parmelee Company and the one and two hackmen who stand with them and solicit for their vehicles are the only persons who stand within the main entrance and solicit passengers and baggage for vehicles; and it is not contended in this case that the one and two hackmen, petitioners, who go into the depot at any one time in plying their business there prevent ingress and egress to or from the said station in its main entrance or that they in any

way obstruct the main entrance and prevent outgoing and incoming passengers from passing through the main entrance; and that they do not interfere with them in any way other than to announce to them that they are cabmen and that they carry passengers for hire. All the petitioners in this case, with the exception of the one and two who at a time go into the main entrance and solicit passengers and baggage for their vehicles ply their vocation upon the street and sidewalk, along Canal street, and that they do not go into the depot at any time soliciting baggage and passengers, except as above set forth. The manner in which these petitioners are carrying on their business within the main entrance of the said passenger station is not an annoyance or an obstruction to the general public or anyone else, nor a nuisance, public or private, but an accommodation and a convenience to the public, and the going into the depot in the manner in which they do go in and solicit passengers and baggage for their vehicles in the manner in which they do is lawful and not a trespass, and the respondent has shown no special or peculiar injury to their property entitling them to an injunction. The respondent has been injured in no way by these petitioners. There is no proof before the court that the respondent has sustained any loss or the railroad companies running into the depot any loss of passengers or freight in carrying on their business by virtue of these defendant hackmen standing in the main entrance soliciting passengers for their vehicles and the other petitioners plying their vocation upon the sidewalk and Canal street along and outside the station grounds of the respondent.

Now with reference to the next point urged by the respondent that the sidewalk in front of the main entrance of the railway station and the street is being occupied by these petitioners in such numbers as to interfere with the ingress and egress of passengers and baggage to and from the said station, and the ingress and egress of the respondent's agents and licensees. In attempting to appropriate the public street and sidewalk to their own use the respondent is seeking to give the exclusive use of the public sidewalk and street in front of the passenger station to the Parmelee Company, its busses, carriages, agents and servants, to the exclusion of others to enable it to monopolize the business of carrying baggage and passengers to and from the said station. In doing so they are attempting to appropriate to their own private use and the use of the Parmelee Transfer Company the public street and the public property of the City of Chicago. The designing manner in which they are attempting to do this is first to exclude the hackmen from going into the station in the manner set forth as above and in the answer of the petitioners and also exclude them from the sidewalk and street in front of its station entrance and at and near the same upon the sidewalk and street and permit the solicitors of the Parmelee Transfer Company to occupy the main entrance of said station, the sidewalk and street in front and near the main entrance to and from said station, and exclude all other hack, cab and expressmen from waiting about there for employment and give a monopoly to the Parmelee Transfer Company in its station, on the sidewalk and street, and permit them to stand in the entrance, sidewalk and street with their horses,

busses and carriages to the exclusion of all other hack, cab and expressmen. If an injunction were granted in this case excluding the petitioners from the entrance, sidewalk and street of said passenger station and the carriages, busses and employes of the Parmelee Company be permitted to occupy the main entrance to said station, the sidewalk and street at, near and about the main entrance to said station, it would operate as the respondent appropriating to its own use and the use of the Parmelee Transfer Company the public street as well as monopolizing the business of common carriers of the City of Chicago at the said station. It would in effect be the same as if the street and sidewalk were fenced in with a gate, admitting only the Parmelee Transfer people and excluding all others therefrom, and taking the public's property for its own private use. This, we contend, cannot be done under any circumstances, and there is no authority or warrant in the law for so doing.

Equity cannot aid the respondent in its unlawful design of giving the exclusive right at its depot to one common carrier to the exclusion of others and monopolize the business of carriage and appropriate a portion of the public thoroughfare and quasi-public property to its own private use and the use of the Parmelee Transfer Company to the exclusion of other common carriers.

There is no equity in this bill that seeks to destroy the business of thousands of law abiding citizens of the City of Chicago, who are conducting their business in a peaceable manner, in accordance with the laws of the state and the ordinances of the City of Chicago,

and the City of Chicago, according to the proof in this suit, have stationed at the station, night and day, three city patrolmen, in the employ of the city, and upon its payroll, to see that all persons going and coming from appellee's station are protected in their legal rights, that they are not wrongfully interfered with in any way, and that all hack, cab and expressmen treat all persons in a gentlemanly and lawful manner, and discharge their duties in accordance with the ordinances of the city.

To permit a few persons under the law to monopolize the carriage of passengers and baggage from depots, wharves and public landings, at which thousands upon thousands arrive and depart therefrom daily in a large City like Chicago, would be to enrich a few and destroy the many engaged in the business of carriage of passengers and baggage, and deprive the public of the right to select their own conveyances, without inconvenience to themselves and upon terms made by themselves.

In conclusion, we submit that final decree entered in the Circuit Court and affirmed by the Circuit Court of Appeals should be reversed and set aside, and cause remanded with directions to dismiss the bill for want of equity.

Respectfully submitted.

RICHARD J. COONEY,
JAMES R. WARD,
Counsel for Petitioners.

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Clerk.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1904.

No. 115 5.

HARRY DONOVAN, et al.,
Petitioners,
vs.
THE PENNSYLVANIA COMPANY,
Respondent.

Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

REPLY BRIEF AND ARGUMENT OF PETITIONERS.

RICHARD J. COONEY,
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THE GUNTHORP-WARREN PRINTING CO., 118 RANDOLPH ST., CHICAGO.

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Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

REPLY BRIEF AND ARGUMENT OF PETITIONERS.

The respondent in its brief, on p. 14, says:

"That cabmen and expressmen have no right to enter the railroad station for the purpose of soliciting patronage without the consent of the railroad company; that the stations, like the railroads, are impressed with a public use and are open to all having contractual relations with the company or its passengers; but this does not embrace the right to carry on any private business in any station or train without the consent of the company, and it may grant an exclusive license to one person to solicit custom of incoming passengers in its stations and exclude all others from the like privilege."

In support of this contention the respondent cites a number of cases that upon close scrutiny have no application to the case at bar and does not in any way determine the point involved in controversy here, and a brief analysis of the principal citations of the respondent in support of the above proposition will disclose this fact.

In the first case cited by respondent, the case of *Jencks* v. *Coleman*, 2 Sumner, 221 (13 Federal cases, p. 442), A. D. 1835, and cases of similar character and similar citations, are cited and pointed out to this court by respondent as being decisive of the principle here involved. In the above case Justice Story charged the jury that a steamboat company might properly make a contract with a connecting stage coach line, giving it the exclusive right to solicit passengers on its boat for the stage line, and it could refuse to accept for carriage on its boat, though he had a ticket, a person who came solely to solicit patronage for a rival stage line. It was urged that the steamboat company was not bound to transport passengers beyond its line. In that case the question involved was whether the steamboat company could give the exclusive privilege to one stage coach and withhold it from another of soliciting patronage *upon its boat.*

In the next case which respondent contends has application as a precedent in this case is the case *Commonwealth* v. *Powers*, 7 Met., 596, 601, 604. In that case the defendant was arrested for an assault upon solicitor for a tavern, expelled with force from the railroad platform of which the defendant had charge, after notice that solicitor would not be admitted. In

that case, the court held that a railroad company as the owner of a station had authority to make reasonable regulations in regard to the use thereof, and their reasonableness must be judged of with reference to the particular station as to whether there is a great throng of passengers, or not, using the same, but a solicitor for a tavern is not a common carrier.

In the next case that respondent relies upon to sustain its position in this case is the case of *Barney* v. *Martin*, 11 Blatch., 233, 234, 236; Fed. Cases, 1030. That was a case in which a boat was libeled in admiralty for the exclusion of a passenger who was soliciting express business on a boat in violation of orders. In that case the court held:

> "A steamboat company or a railroad company is not bound to furnish traveling conveyances for those who wish to engage on their vehicles the business of selling books, papers or articles of food, in the business of receiving and distributing parcels of baggage, nor to permit the transaction of this business in their vehicles when it interferes with their own interests. If a profit may arise from such business, the benefit of it belongs to the company and they are entitled to the exclusive use of their cars for such purposes."

In the case of *New Jersey & Co.* v. *Merchants Bank*, 6 Howard, 356 (47 U. S.), cited by respondent in support of its view of the controversy here involved, the court there held:

> "The incidental benefit arising from the *transaction of such business as may be done on board a boat or a car* belonged to the carrier and he can allow the privilege to one and exclude it from another at his pleasure; that the individual is under their control, subject to their regulations, and the

business interferes in no respect with the orderly management of the vehicle. That the cars and the boats are that of the carrier, and that the license of an individual to the exclusion of others comes under the head of reasonable regulations."

In the case of *Barney* v. *Steamboat Co.*, 67 N. Y., 301-3, another citation. This was a case in which plaintiff brought action against the defendant, upon whose boat he had formerly been accustomed to solicit orders for the delivery of passengers' baggage. He was ordered to cease soliciting and a license to carry on this business had been revoked and granted to another.

In this case, the court held substantially, as in the above cases cited by the respondent, that the steamboat company was for the convenience of passengers and for its own profit on its cars or vessels, an agency for the delivery of baggage for passengers and to exclude all other persons from entering its cars or vessel to solicit or receive orders from passengers in competition with the *agency established.*

In all of the above cases cited by the respondent in support of its position in this case, they have no bearing whatever upon the point here involved. In the above cases the question involved was as to whether the steamboat company or the railroad company was bound to furnish traveling conveyances for those who wish to engage on their vehicles in the business of selling books, papers, articles of food or in the business of receiving or distributing parcels of baggage, or permitting the transaction of business on their vehicles when it interfered with their own business.

These cases relate only to privileges carried on on

vessels, vehicles and cars, and has no application to the rights of passengers and their baggage after their arrival from the trains at depots, or passengers or baggage arriving at wharfs or public landings, and in no way can have any application to hack and cabmen as common carriers to receive and solicit passengers and baggage at railroad depots after the journeys on boats or railroads are terminated, for they have reached the end of their journey upon railroads and boats and arrived at the termini of the boats and railroads.

These cases relate to persons who seek to carry on business upon the boats and cars of steamboat companies and railroads and has no application whatever to the rights of common carriers about wharfs, steamboat landings and depots or *quasi*-public property.

The question involved in this case and upon which the weight of authority is with the petitioners is this: That at depots, wharfs and public landings, after passengers and baggage of boats and railroads have been delivered at their destination, and the duty of boats and railroads towards its passengers have terminated and they have arrived at the end of their journey, the contention of the petitioners is that there can be no discrimination made between common carriers in receiving passengers and baggage from railroads and steamboats after passengers and their baggage have arrived at their journey's end, or discrimination against passengers by giving them only a partial hack service, or by carrying them around the streets in large numbers in omnibuses, or *that contractual relations of railroad companies with other transfer com-*

panies can destroy quasi-public property of its public uses and the public of its rights therein. Hackmen and expressmen are common carriers of passengers and baggage, and their rights are the same as any other common carrier of passengers and baggage, and that the railroads and steamboat companies at their wharfs, depots and public landings cannot give the exclusive privilege to one common carrier to the exclusion of other common carriers in the receiving of and the carriage of passengers and baggage from their depots, wharfs and public landings.

In this case it is contended by respondent that they have a right to give the exclusive privilege at its passenger stations to one line of carriages to the exclusion of all other persons engaged in the carriage of passengers and baggage for hire, and this for a valuable consideration and for their own profit, and to control and regulate the transportation of passengers and baggage beyond its terminus and operate an express and carriage business for the carriage of passengers and baggage throughout the City of Chicago to depots, hotels, business places, homes and elsewhere, and that they have a right to a monopoly of that business at its station in the City of Chicago, and for profit to themselves exercise and carry on a business not granted to it in its charter.

In this case, if this is permited to be done by this court, its effect is to create and maintain a monopoly and destroy the business of other common carriers in the City of Chicago. Against such a proposition the weight of authority in America, according to the text writers, is against the respondent. Fetter on Carriers

of Passengers, Vol. 1, Section 235, page 638; Ray on Passenger Carriers, Sections 113, 114, 115; 4 Elliot Railroads, Sec. 1678.

In all the well considered cases in this country the weight of authority is against steamboat companies or railroad companies engaged in the carriage of passengers, in granting exclusive privilege to one common carrier to the exclusion of other common carriers at their stations and steamboat landings; and the cases cited by appellee that relate to privileges granted to one person to the exclusion of another person upon its boat or car have no application to the case at bar.

In the case of *Kates* v. *Atlanta Baggage and Cab Co.*, 107 Ga., 636-642-3, cited by respondent, in which an expressman filed a bill to enjoin the cab company and the owners of the Union Station at Atlanta from giving to a cab company the exclusive right of soliciting passengers on the trains, in which the opinion of the court therein was based upon the case of *Flucker* v. *Garzo, Ga. R. R. Co.*, 81 Ga., 461, which had been previously decided by that court, in which it was held that the business of selling lunches to passengers was not one which any member of the public might engage in on railroad property.

The court did not seem in this case to distinguish between a lunch vendor and a common carrier, and the rights of the passengers and the public at stations, wharfs and public landings, and is a poorly considered case. It is true the weight of authority holds that persons cannot enter into the carriages, cars or boats of railroad and steamboat companies and there engage

in business of their own with passengers without the consent or permission of the railroad or steamboat companies.

In the case of *Griswold* v. *Webb*, 16 R. I., 649, is a case in which the question of exclusive privilege does not arise at all and is a case not in point, as the question of *exclusive privilege* does not arise.

In the case *of Summitt* v. *State*, 8 Lea, 413, cited by respondent, was a case where a conviction of defendant, watchman in a depot, for assaulting and ejecting a hackman therefrom. The company had forbidden all hackmen from entering the building. In this case the question of exclusive privilege did not arise, and the question here was not involved at all in the above case.

In the case of *The Old Colony R. R. Co.* v. *Tripp* (1888), 147 Mass., 35, 38, 40, is a case cited by respondent in its brief, in which an action of trespass is brought by the company against the defendant, a solicitor of baggage, for trespassing upon the station grounds in plying his vocation after being notified that the exclusive privilege had been granted to another baggageman. The Supreme Court (Justices Morton, Field and Devens dissenting) held that such a contract and its enforcement was not a violation of the Massachusetts statutes, requiring railroad corporations to give all persons reasonable and equal terms, facilities and accommodations for transportation of themselves and merchandise, and have the use of depot and other buildings and grounds. This case followed the early English cases and is a holding based wholly upon English precedent in the construction of

a similar act (17 & 19 Vict. C., 31), and in doing so the court of Massachusetts followed the decisions in the early English cases, which are not in harmony with each other and conflict with later decisions of that court. The dissenting opinion of the three judges of the Massachusetts court has been followed and adopted as the law of most of the states, with the exception of two or three of the states of this Union, and in this case the question of a depot being *quasi*-public property and subject to public uses, did not present itself to the court, or rights of passengers and the public.

In the case of *Brown* v. *New York Central & Hudson River Railroad Company*, 27 New York Supp. Rep., page 69, and the *N. Y. C. R. Co.* v. *Flynn et al.*, 74 Hun., 124, 126-8 (1893), are cases which favor the respondent in their contention here, but the opinion is based upon the fact that this court holds "THAT A HACKMAN IS NOT A COMMON CARRIER AND HENCE HE DOES NOT COME WITHIN THE STATUTE QUOTED." These are the only cases to be found anywhere in English or American cases that a hackman is not a common carrier, or an expressman is not a common carrier. There can be no question but what a licensed hackman and cabman, petitioners in this case, are common carriers and were at common law common carriers and are regarded as common carriers by all the courts of all the states in this Union, with this one exception, notably New York. A precedent of this character which holds that "cab and expressmen are not common carriers," which is in conflict with all law except its own, can be of but little value to the court in the case at bar. This being the holding of this court it is clear

by inference that if the court held that cab and expressmen or hackmen were common carriers, and that one hackman or cabman could not be given exclusive or special rights at wharfs and depots in the solicitation of passengers and baggage for their vehicles to the exclusion of others.

In *Godbout* v. *St. Paul Union Depot Co.*, 79 Minn., 182, 190-200, there the company was sued by a cabman for being excluded from the station on account of an exclusive contract with a cab company, in which they hold an exclusive privilege, may be granted to one cabman to enter its station grounds and solicit business, but that the outside facilities must be equal, and that the inside need not be. The court in its reasoning follows a line of cases that under no circumstances can be sound and reasonable and that are not in point in sustaining the court in its judgment. The court says:

> "It is well settled a common carrier may grant the exclusive privilege of soliciting the patronage of passengers on its boats and trains, also sell books and refreshments on its trains, grounds and depots, and we have met with no case to the contrary. No case has been brought to our attention where an attempt has been made to apply the rule within a vehicle."

This may be true, and perhaps is the law, but the petitioners in this case are not engaged in soliciting patronage on the trains of the respondent or engaged in selling books and refreshments on the trains or depot grounds, but are public common carriers engaged in the carriage of passengers and baggage and at a point and termini of the railroads entering the Union Passenger Station, and the reasoning is far-

fetched upon the part of the court that attempts to apply the same rule to common carriers that it does to lunch and fruit peddlers and newspaper vendors, who ply their vocation on the boats and vehicles of the company.

The court says in the case of *State of Mississippi* v. *Red*, 43 L. R. A., 136:

> "That the cases of *Barney* v. *Oyster Bay and H. S. B. Co.*, 67 N. Y.; *Fluker* v. *Georgia B. & Bkg. Co.*, 81 Ga., 461, do not present the precise point involved in the case before us. They are all decisions of other questions and can readily be distinguished from the case at hand."

The same thing can be said of all the precedents cited by the respondent in its brief with two or three exceptions, that they do not present the point involved in the case at bar and can be readily distinguished from this case. It is a mistake upon the part of the court in passing upon the question here involved to class solicitors upon trains and persons engaged in the sale of luncheons and newspapers upon cars and in depot stations with common carriers, hackmen and cabmen, and disregarding the rights of passengers, the public, and the laws and ordinances of the state and city. It is clear from a review of all the cases that have been judicially determined that relate to exclusive privileges in so far as they relate directly and exclusively to hackmen and expressmen, passengers and the public, that the greater number of cases and a greater weight of authority is against the right of railroad companies and depots to give the exclusive privileges to one hack or expressman or line of hacks an exclusive or better privilege at its station grounds

than to another, that it is illegal discrimination and a contract giving an exclusive privilege is void and is against public policy and a creation of a monopoly.

Let us see further what the court says in the case of the *State of Mississippi* v. *Joseph Reed*, decided December 19, 1898, *supra:*

> "The question is one that affects not only the excluded hackmen; it affects the interests of the public. The upholding of the grant of this exclusive privilege would prevent competition between rival carriers of passengers, create a monopoly in the privileged hackmen, and might produce inconvenience and loss to persons traveling over the railroad, or those having freight transportation over it, in cases of exclusion of drays and wagons from its grounds, other than those owned by the person having the exclusive right to enter the railroad's depot grounds. To concede the right claimed by the railroad in the present case would be, in effect, to confer upon the railroad company the control of the transportation of passengers beyond its own lines, and in the end to create a monopoly of such business, not granted by its charter, and against the interests of the public. These are the views ably urged in *Kalamazoo Hack & Bus Co.* v. *Sootsma*, 84 Mich., 194; 10 L. R. A., 819; *Montana Union R. Co.* v. *Langlois*, 9 Mont., 419; 8 L. R. A., 753; *Cravens* v. *Rodgers*, 101 Mo., 247, and *Connell* v. *Pedigo*, 92 Ky., 465. These are the views held, too, by three dissenting judges in the case of *Old Colony R. Co.* v. *Tripp*, 147 Mass., 35-41. The majority of the judges in that case held that a railroad might grant to one an exclusive right to solicit patronage of incoming passengers; but this is the only American case making that distinct holding, and that opinion was delivered by four judges, the three other members of the court vigorously dissenting, and with better show of reasoning, in our

judgment. The cases of *Barney* v. *Oyster Bay & H. S. B. Co.*, 67 N. Y., 301; *Fluker* v. *Georgia R. & Bkg. Co.*, 81 Ga., 461; 2 L. R. A., 843, and *Cole* v. *Rowen*, 88 Mich., 219; 13 L. R. A., 848, do not present the precise point involved in the case before us. They are all decisions of other questions, and can be readily distinguished from the case in hand. Counsel for appellant think that in *Cole* v. *Rowen*, 88 Mich., 219; 13 L. R. A., 848, the Supreme Court of Michigan has swung away from the doctrine announced in the earlier case of *Kalamazoo Hack & Bus Co.* v. *Sootsma*, 84 Mich., 194; 10 L. R. A., 819. But that very able court did not so think, and was careful to disabuse the mind of counsel, who seems to have the notion which counsel here puts forward, and the court clearly distinguished the two cases.

"We are of opinion that the railroad had no right to exclude Reed, the appellee, from its depot and inclosed grounds, on the facts appearing in the agreed statement on which the case is submitted to us, and hence that *the action of the court below in discharging Joseph Reed was correc.*."

In the case of *Lucas* v. *Herbert*, 148 Ind., 37 L. R. A., 376, cited by respondent in support of exclusive or special privileges in this case, the whole question was not involved, but the question there involved was, had the railroad the right to designate a place upon its grounds where competing hacks should deliver passengers and baggage? It is a case relating to *"Rules and Regulations,"* and not to *Exclusive Privileges.*

But in the case of *Indianapolis Union Railway Company*, L. R. A., 45, May 23, 1899, decided two years later than the *Lucas* v. *Herbert* case, and where the question was directly involved. The court there held the exclusive right cannot be granted.

In this case respondent seems to rely principally upon the case of *Old Colony R'y Co.* v. *Tripp*, 147 Mass., which is an opinion of a divided court, four of the judges holding in favor of the exclusive privilege and three against. In passing upon this case the court held the giving to one person the privilege to solicit baggage upon its ground, and excluding other baggagemen from soliciting there, is not in conflict with the statute of Massachusetts, requiring reasonable and equal terms, facilities and accommodations for the transportation of themselves * * * and merchandise * * * and have the use of the depot buildings and other ground.

In this case the court followed the English cases, and say in their opinion the English cases tend to support the Massachusetts case. In the English cases the decisions of the courts were based upon 17 and 19 Vic. C., 31; and the Massachusetts statute being similar to the English statute, the Massachusetts court followed some of the English cases (and some it did not) in holding that an exclusive privilege might be given to one baggageman to the exclusion of the others. The Tripp case is a case that forms the first, and we might say the only case supporting the theory of the respondent, and is in conflict with the weight and authority of American decisions.

In the case of *Godbout* v. *St. Paul Union Depot Co.*, 79 Minn., 188, cited by respondent in its brief in support of its contention, the court say that in that case

> "It is well settled that a common carrier may grant the exclusive privilege to solicit the patronage of passengers on its boats and trains, also sell books and refreshments on its trains, grounds

and depots. * * * We have met with no case to the contrary and no case has been brought to our attention where an attempt has been made to apply the rule within the depot; * * * also no complaint is made in the case before us that any discrimination was practiced against the appellant outside the depot."

In that case he was denied equal privileges with other common carriers, the court in that case following a line of decisions in support of its finding that it had no application to the rights of common carriers, passengers and the public at all. They cited cases in their holdings that relate wholly to soliciting patronage of passengers on boats and trains, and the sale of books and refreshments on boats and trains, on depot grounds; and seek to have this line of cases that relate to persons engaged in carrying on their private business on boats and trains and depots in the sale of books, papers, refreshments, etc., apply to a line of cases that in no well considered case by any court have held that they have any application whatever to the occupations and callings of common carriers, the rights of passengers and public; and the well considered case of *Mississippi* v. *Reed, id.*, so held that this line of cases had no application whatever to persons engaged in the occupation and calling of common carriers.

In the case of *Kates* v. *Atlanta Bag. & Cab Co.*, 107 Ga., 636. This is also a poorly considered case. If the court will notice, the decision in this case was based upon the decision of *Fluker* v. *Ga. R'y Co.*, 81 Ga., 461, in which the court held that the business of selling lunches to passengers was not one in which

any member of the public might engage in on railroad property.

It must be plain to this court that the holding of the courts of Massachusetts, Minnesota, Georgia and New Hampshire, that railroads and depots may discriminate against one common carrier in favor of another and against passengers and public, that where these four decisions rest for their authority upon a line of decisions that relate wholly to and exclusively to a class of persons who were not common carriers and who sought to carry on and ply their private business upon boats and cars of common carriers, as solicitors for hack and cab lines, and in the sale of lunches, books and newspapers, should have but little weight and force with this court and its determination of the case at bar. In this class of cases, it was an attempt upon the part of persons to engage in their own private business upon the cars, boats, vehicles, of common carriers with passengers on the steamboats and railroads before the passengers had arrived at their destination.

But the passengers, the carriers of passengers, baggage and freight and public have rights at and on station grounds, wharfs and public landings that steamboats and railroads cannot destroy by contract; if so, its public or *quasi*-public character will be destroyed and it will cease to be *quasi*-public property impressed with a public use, but private property for private uses.

It is not contended by the petitioners in this case that they have a right to engage upon its cars and coaches in the business of soliciting patronage of passengers and baggage for hire for their vehicles; but it

is contended by the petitioners that after the passengers and their baggage have arrived at the end of destination and at the terminus of the railroad company that there can be no discrimination at that point within the depot, or without the depot, whereby the railroad company may give the exclusive privilege to one line of cabs to the exclsuion of others engaged in the same line of business, or that contractual relations of respondent with the Parmelee Company justifies it in granting exclusive privileges and in creating a monopoly and converting *quasi*-public property to private uses for their own private gain under the pretense of public good when it is for private gain.

At this point we wish to say in reply to respondent in its citation of the New York cases in support of its view that railroad companies and steamboat landings may give exclusive privileges to one line of common carriers and deny them to others in New York under a provision that railroad companies shall give no preference for the transaction of the business of a common carrier on the cars, or in its depots, or on its grounds, to any person competing in the same business, or in the business of transporting property for themselves or others; it is held that such a provision does not require the railroad company to allow all hackmen alike to use its grounds as a standing place to solicit business at its depots, as a hackman is *not a common carrier in the meaning of such statute.*

We desire to call the court's attention to this matter specifically to show the court that the New York decisions are based upon the statute of the State of New York in the construction of the statute by the court

of New York, in which that court holds that a hackman is not a common carrier within the meaning of the act. We might say it is a construction of the act not warranted by the act. It is not necessary here to comment further upon the many New York cases cited by respondent in support of its contention, because in this state and in every state in the Union and at common law hackmen engaged in the carriage of passengers and baggage for hire were and are common carriers, and the holding of the New York courts that a *hackman is not a common carrier* is a clear departure from the decisions of all the courts of common law, and in all states and territories, and therefore can have but little weight in the determination of the question at bar.

In a former portion of our brief and in this reply brief we have stated that a majority of the American decisions deny the right of a railroad company to grant such exclusive privilege to one line of common carriers and deny the same to others, and ignore the rights of passengers and the public and the laws of the state and city.

We desire here to say now after an investigation of the English cases of the precise question presented to the court in this case, that the majority of the English cases appear to sustain the majority of the American cases, denying the right of a railroad company to grant such exclusive or special privileges. Where the cases seem to sustain the granting of special privileges to one line of carriers to the exclusion of other carriers, they are based upon what they call specific, constitutional and statutory provisions, which

enter into the determination of the cases in particular states or localities; but where the cases have been decided from points of common view of the powers of the corporations, and the *questions of public policy prevail*, a large majority of the cases sustain the contention of the petitioners in this case; that the respondent cannot grant the exclusive or special privilege to the Frank Parmelee Transfer Company at its passenger station in the carriage of passengers and baggage arriving at its station on incoming passenger trains and deny that right to other common carriers, who go there to receive passengers and baggage on incoming trains for carriage. The passenger's payment of transportation includes payment for their common use of the station facilities. If they are not entitled to have the use of those facilities disinterestedly for their advantage, they are at least entitled to have the respondent refrain from coercing them into yielding further tribute. For under an exclusive privilege, the right is sold to the favored common carrier for a consideration that goes into the treasury of the respondent and that goes to increase respondent's profits out of money received from the passenger after they have arrived at the passenger station, and are therefore under the law beyond the control of railroad companies from exacting from them any further money or compensation for transportation beyond its terminus. Under the law there can be no question but what it is the duty of the railroad company to afford ample facilities at its station for the convenience and accommodation of passengers and baggage arriving on incoming trains for procuring further facilities when required by the passenger, and give ample

opportunity to the passenger to select his mode and manner of transportation without the company exacting of him further tribute to be divided between the railroad company and the hack or cabman who is favored with the grant of this special privilege to the exclusion of others.

The English cases cited by respondent are cases decided many years ago and are in conflict with the more recent cases of that country. We are informed that practice in London, the largest city in the world, at whose depots, wharfs and public landings more persons arrive and depart daily than any other city, that cabmen and expressmen enjoy equal privileges and without discrimination under rules and regulations uniform in character and applying to all alike. That they are called as needed and in the order they wait for employment, and if the vehicle is satisfactory to the passengers he engages him, if not another is called. The arrangement facilitates business and is convenient and satisfactory to all concerned. That special privileges are at an end in that country by law or by common consent.

Respondent has only the powers expressly granted and those that are necessary to the exercise of express grants. If under regulations that are uniform and impartial, the equality fails by reason of limited facilities, respondent would not be at fault. Respondent acquired its ground through the sovereign right of eminent domain, whether by purchase or by condemnation; for it could not obtain a broader right by grant than by force. Taking the land by the right of the state for the purposes of public houses, respondent

should not be permitted to grant special privileges and immunities that the state could not.

Section 22 of Article 4 of the constitution of Illinois, relating to the legislative department, provides as follows:

> "The general assembly shall not pass legal or special laws in any one of the following enumerated cases; that is to say, * * * granting to any corporation, association or individual any special or exclusive privilege, immunity or franchise whatever." "If the general assembly itself can not pass a special law giving special or exclusive privileges, then *a fortiori*, its creature, The Pennsylvania Company, while a citizen of Pennsylvania, yet is subject in this respect to the laws and constitution of this state where it is in operation and doing business here."

If the corporation chartered in this state and doing business as common carriers cannot grant special privileges, and the business of common carriers in this state is under the control and supervision of the police power and its regulations in this state, and the laws and constitution of the state, respondent must carry on and conduct its business in this state in conformity to the laws of this state. Under the New York decisions, the petitioners in this case would not be bound to receive and transport passengers, but could accept some and reject others, which under the law and holdings of the court in that state would make them provide carriers, and therefore could claim no greater right upon the depot grounds than any other private citizen; but in this state they are common carriers under the law and must carry the passengers and baggage of all persons who offer themselves to them

and who desire to be carried by them, and they cannot decline to accept and carry such persons, because they are under our law and under every well considered case common carriers; that is to say, public carriers must render services to the public whenever a passenger presents himself in proper condition for carriage, and is ready and willing to pay the compensation prescribed by law; and if they decline to so carry such a person under the law they would be liable for damages, in any result, from declining to carry a passenger, or his baggage, who presented himself to them for carriage, and fine and forfeiture of license.

In conclusion, we wish to say that stations, like the railroads themselves, are impressed with a public use and are open to all common carriers whose business is impressed with a public use, for receiving and carrying passengers and baggage for hire. That the business of common carriers, both railroads, cabmen and expressmen, are under police regulation and control, because it is a business that affects the public and the public retains and exercises control and supervision over the same in the interests of the people on account of their public nature and character. It is held by the greater weight of authority that a railroad depot and passenger station is *quasi*-public property, and as such the public at large have an interest therein that cannot be destroyed *by contract or contractual relations, or by contract converted to private uses by respondent and for profit to itself and the Parmelee Company.* That the railroad company cannot control and appropriate the use of the same to themselves and grant special privileges to one common carrier to the

exclusion of other common carriers, when the same affects the interests of the public, common carriers and passengers. In this case, there would be no trouble at all between the petitioners and the respondent if it would acquiesce in the decision of the Supreme Court of this state. If the respondent would follow a majority of the decisions of the English and American courts in exercising the rights the law confer upon it, in adopting the rules and regulations relative to the conduct of its business the business of hackmen and expressmen, as common carriers for the convenience of passengers and public at its depot station, there would be no trouble whatever. The business would then be carried on according to the spirit and letter of the law. The public would be amply protected. The public service of hackmen and cabmen would be improved and the public would receive and exercise advantages and privileges that they do not now enjoy, and instead of a partial hack service would have a complete hack service for all persons arriving and departing from its station.

If respondent followed the law in the adoption of rules regulating the business of hackmen and cabmen at depots, and they were uniform and applied to all alike, without discriminating against any cab or cabmen or a line of cabs, there would be no trouble whatever at its depot. The business would be carried on in a peaceful and orderly manner and passengers arriving at the stations would be afforded facilities that they do not now have. If reasonable rules and regulations were adopted, as suggested by the courts in their opinions, passengers arriving at its station would

find well kept conveyances for carriage, accessible to them where they could make their own choice and selection of a vehicle independent of the acts or conduct of the respondent in this case. If the reasonable rules and regulations suggested by the courts should be adopted by the respondent at its station, and have them uniform and apply to all cabmen and expressmen alike, the respondent would have in its power and control the supervision and control of all cabmen and expressmen at its station and require all cabmen and expressmen plying their vocation there to live up to these rules and regulations; and in so doing there would be no annoyance to passengers arriving or departing from said depot, and there would be no obstruction in any way to prevent ingress and egress to and from its passenger station.

Special privileges create monopolies, destroy the business of the many and disturb the peace and order of society, and will continue so long as public property or *quasi*-public property, dedicated to or subject to public uses, remains a favored field for monopolies.

To illustrate this fact, the Grand Central Depot in Chicago, since the holding of the Supreme Court of this state, in *Pennsylvania Co.* v. *City of Chicago, supra,* upon the rights of hack and cabmen at passenger stations, has adopted the opinion of our state court in supervising the conduct of hackmen and cabmen at its depot for the accommodation of passengers and the public, and as a result the company in charge of that depot finds that the rules and regulations adopted by the company and followed by the hack and cabmen doing business at that place is more satisfactory than

it has ever been at that place (as shown in record by answer of petitioners). That since the adoption of the said rules and regulations the service of hack and cabmen has been improved, the public are receiving better accommodations, and there is no annoyance of any kind or character that affects the public or passengers arriving at or departing from the said station, and that there is nothing in the business of hackmen and cabmen at that station that obstructs the entrance to or from the station, or prevents ingress or egress to or from the same, and that the business of hack and cabmen at its station carried on by its rules and regulations, in which there is no discrimination whatever, is more satisfactory to the company, the public and the hackmen themselves; and that the company's passengers arriving there and taking their departure suffer no inconvenience whatever from the adoption of the rules and regulations which are uniform in their character, and apply to all alike, in which the railroad company grants equal privileges to all and special privilege to none. At the time this case was in Court of Appeals the Lake Shore and Michigan Southern and the Chicago, Rock Island and Pacific Railroads, with the other great railroads that run into that depot the traffic at the depot and the number of passengers arriving and departing daily equaled the number of passengers arriving and departing daily from the respondent.

If the rules and regulations adopted by the Grand Central Depot were adopted by the respondent, the same results would undoubtedly follow, and the respondent, the public and hackmen and cabmen would

find it to their advantage to have respondent adopt such rules and regulations and have them apply to all alike. Then there would be no trouble whatever. Then cabmen and expressmen would be required to live up to these rules and regulations, and for any breach of the rules or any impropriety upon their part could be excluded from the privileges other cabmen would enjoy at that point; and the respondent, the public and other hackmen protected against other hackmen engaged in the same line of business who would commit a breach of the rules. The respondent, with their three special police officers at this depot at all times, and three policemen of the City of Chicago, as the proof in this case shows, who are continually in and about that station, day and night, could see that all persons that are passengers, employes of the railroad company, or cabmen and expressmen, observed the law of the state, the ordinances of the city and the rules and regulations of the respondent, and see that the rights of all the persons there are respected and protected.

Is this not an equitable view of this case? Is it not the legal view of the case? Is it not the duty of the respondent to adopt these rules and regulations and live up to the letter and spirit of the law, instead of attempting to avoid it, and by an inequitable procedure attempt to create a monopoly and grant special privileges to one line of common carriers to the exclusion of others with a view of enhancing its own emoluments independent of the rights of the public and the law of the land. There cannot be anything more inequitable and unjust than for the respondent in this case to de-

stroy the occupation and business of a large body of law-abiding citizens and taxpayers of this city, engaged in the lawful business of common carriers in and about respondent's station. The respondent should destroy the monopoly it has created there by excluding all cabmen from within its depot or admit all on equal terms.

The proof in this case shows, and it is not controverted by the respondent, that at no time have more than two cabmen at any one time entered into the said passenger station and solicited passengers and baggage for their vehicles, which stood a distance of from 200 or 300 feet north of the main entrance. That the two cabmen who entered together into the depot stood at the point and place designated by the railroad company as place for the solicitors of passengers and baggage for the Parmelee Transfer Company to stand and solicit passengers and baggage for the Parmelee Company. The proof in the case shows that the two cabmen who entered the said station went there dressed properly and deported themselves in a peaceable and gentlemanly manner and in a respectable way announced, in an ordinary tone of voice, to incoming passengers, "Cab," "Cab," and if their offer was accepted they received the passenger and his baggage, took him out on the sidewalk and placed the baggage and the passenger in the vehicle and took him to his destination. In so doing, it is clear in this case that these two cabmen, in company with each other, and at one time, entered the said station and stood at a point designated by appellee as a place for cabmen to stand and solicit passengers and baggage for incoming cabs,

vehicles or carriages, did not in any way interfere with passengers arriving at that station, and did not in any way interfere with or prevent ingress or egress to or from said station to the annoyance of the public, the railroad company, or any one else who arrived at or took their departure from that depot.

Another reason why the writ of injunction issued herein should be vacated and set aside is for the reason that the public are not at this time accorded the privileges and rights of passengers arriving at that station and given an opportunity of selecting their own mode of conveyance after arriving at the termini of the railroads entering the station. Passengers who alight from a train in coming out of depot on to Canal street are met by the Parmelee Transfer agents, and when they step from the depot on to Canal street they meet with and see only the omnibuses of the Parmelee Transfer Company standing at the sidewalk on the street in front of the main entrance to said depot and are the only conveyances standing at that point that they see for transferring them from the depot about the Loop district in the City of Chicago. The 'buses are large vehicles, capable of carrying from ten to twenty people, as shown by the record, and many people who arrive there do not desire this mode of conveyance, but seeing no hacks, carriages or cabs convenient to said station for conveying them to their destination are compelled to and frequently do take carriage in said 'buses, which is usually an undesirable mode and vehicle for conveyance; but the respondent may say that in connection with the 'bus line that the Parmelee Transfer Company is operating also a

cab or carriage line; that they have within the main entrance of the said depot solicitors to announce to incoming passengers that they have a line of carriages for the conveyance of passengers that stand upon the railroad property a distance of 400 or 500 feet north of the main entrance to said station, and when incoming passengers come out in the main entrance, he has an opportunity of procuring a carriage from the solicitors there, who announces to all incoming passengers that it has carriages that wait for hire and for carriage, and if the passenger desires to use one of its carriages he procures a ticket from the solicitors and the solicitors use an electric bell connected with their hack stand, located a distance of four or five hundred feet north of the main entrance to the said depot. The solicitor touches a button and the electric bell at the hack stand notifies the drivers of carriages that a passenger has been secured who desires to be conveyed in one of its carriages; but it is not carrying any passengers in a carriage that it can load into a 'bus and carry, but the great number of passengers arriving at the depot are strangers in the city, do not know the modes of conveyance and are loaded in the 'buses in large numbers, and that make a number of stops before reaching their destination and hauled about the streets.

In the selection of his carriage and the person who is to drive him he has no choice whatever; he does not see the vehicle, the person, nor the horse, nor character or condition of either horses, driver or carriage; and he is not permitted in any way of his own volition to select the character of the vehicle that he desires to

be conveyed in. He procures his ticket from the solicitors without seeing the vehicle, horses or driver, and the Parmelee Transfer Company then conveys him to the place of destination in the vehicle of their own selection and in a vehicle with horses and driver that meets with Parmelee agents' ideas and notions of doing business, as well as the respondent's ideas and notions of the kind and character of vehicle that a passenger arriving at that station should ride in and use, without competition and with least expense to both and with the greatest profit to both.

Another imposition upon the public is this: Passengers arriving at the station who take carriage in the 'buses pay 50 cents each for being conveyed anywhere within the City of Chicago one mile from the said depot. If a man and his wife, or two persons traveling in company with each other, arrive upon incoming trains at the station of the respondent, the Parmelee Transfer Company charges them the sum of 50 cents each for conveying them to any of the hotels about the city within one mile of the said station in its 'buses or other places that they may desire to go within one mile from the said depot; while the petitioners, cabmen in this case, will receive and do receive passengers arriving at the said station and carry husband and wife, or any two persons traveling in company with each other, within one mile of the said depot to all hotels and other places in the city, for the sum of 50 cents; or, in other words, the petitioners charges are 50 cents less than is charged by the Parmelee 'Bus Company for the same service. In traveling in the Parmelee Transfer Company's the 'buses are large,

uncomfortable, and all classes and conditions ride therein in company with each other; while in riding with the petitioners the passengers ride in neat, clean and comfortable cabs by themselves, or in company with each other, and with comfort and pleasure to themselves.

In this particular, the petitioners in this case, where two persons arrive at the said station in company with each other, furnish them with better conveyance and at one-half the price than when the passengers arrive at the said station in company with each other and take passage in the omnibuses of the Parmelee Transfer Company, to whom the respondent is seeking to give the special and exclusive privilege of receiving passengers and baggage at said depot.

It is clear to the court that there must be an annual saving to the public of thousands of dollars to people who arrive at the said depot who are traveling in company with each other, or two by two.

In reference to the question of irreparable injury and inadequate remedy at law, we wish to say that the respondent in this case has not shown where it has been injured in any particular whatever or their property in any way injured by them or any of them, and that the record discloses that no injury of any character whatever has been inflicted upon the respondent, that there can be no legitimate or lawful complaint made against petitioners in this case. There can be no question that the petitioners carrying on their business in the manner in which they have carried the same on and are carrying the same on about respondent's passenger station is an advantage and a benefit to the

public, and their carrying on and conducting their business at that point and in the manner in which they do carry on their business is a great public necessity and convenience to the traveling public, and there can be no question of any injury of any character or nature that the respondent in this case can complain of, unless it be as to the competition given the public at its station by these petitioners competing with the Parmelee Transfer Company, to whom the respondent is attempting to give the special privilege of carrying passengers and baggage from its station. The citations of the respondent with reference to injunctions relate wholly to obstructions upon the streets of a permanent and immovable character, and have no application whatever to cabmen and expressmen and men in like occupations who are never permanently upon the street at one point to the exclusion of all others, but like all users of horses and vehicles upon the street are continually moving in, about and upon the street, and are moving in and about the street for the convenience of each other and all other persons using the street, with the least delay possible to each other and the least delay and inconvenience to all persons using the streets and sidewalks. The occupation of cabmen and expressmen is a business and vocation that is carried on in the cities by the use of the streets and the sidewalks, and it is an accommodation and a convenience to the public for them to stand upon the sidewalks and streets and wait for business at a point and place suitable to and adapted to public needs by occupying places upon the street and sidewalk favorable to the receiving of passengers and baggage. Public necessities require this,

and the law and courts favor expressmen and cabmen standing at points and places convenient and accessible for the receipt of passengers and baggage, and the courts recognize that depots, wharfs, public landings and places where passengers arrive and depart upon cars and boats, as a place suitable and adapted for cabmen and expressmen to ply their vocations.

We again submit that the final decree entered in the Circuit Court and affirmed by the Circuit Court of Appeals should be reversed and set aside, and cause remanded with directions to dismiss the bill for want of equity.

Respectfully submitted.

RICHARD J. COONEY,
JAMES R. WARD,
Counsel for Petitioners.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1903.

HARRY DONOVAN, GEORGE CALLAHAN et al.,
Petitioners,
vs.
PENNSYLVANIA COMPANY,
Respondent.

Petition for Writ of Certiorari.

OBJECTIONS TO THE ISSUANCE OF THE WRIT.

FRANK J. LOESCH,
EDGAR A. BANCROFT,
CHARLES F. LOESCH,
FOR RESPONDENT.

THE GUNTHORP-WARREN PRINTING CO., 115 RANDOLPH ST., CHICAGO.

IN THE

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OCTOBER TERM, A. D. 1903.

HARRY DONOVAN, GEORGE CALLAHAN et al., *Petitioners,* vs. PENNSYLVANIA COMPANY, *Respondent.*	Petition for Writ of Certiorari.

OBJECTIONS TO THE ISSUANCE OF THE WRIT.

MAY IT PLEASE THE COURT:

The bill filed in chancery by the Pennsylvania Company complained of two distinct invasions of its property rights:

First, that the defendants, forty in number, were accustomed, one or two at a time, to enter its passenger station in Chicago and stand at the head of the stairway at its main entrance and there solicit the custom of incoming passengers for cabs and carriages, express wagons and hotels.

And *second,* that said defendants were accustomed to congregate in groups of from 8 to 20 upon the sidewalk in front of or adjacent to such main entrance and there solicit the custom of the railroad passengers, and did thereby constantly and seriously interfere with and obstruct the ingress and egress of the complainant's passengers and employes.

(1.) The answer to the bill did not deny that the defendants were constantly entering the station and there plying their vocations, but on the contrary expressly asserted that they, all and each, had an equal right to stand inside the station and solicit patronage, and that the complainant had no lawful right to grant any privileges to one licensed cabman or expressman without granting the same to all.

(2.) The answer denied all allegations of obstruction to ingress and egress by the congregating of defendants upon the sidewalk in front of the entrance to the station. But upon the hearing, the allegations of the bill were fully sustained by the weight of the evidence presented by affidavits, as the trial court found. The Circuit Court granted a preliminary injunction against both invasions and its order was affirmed by the Circuit Court of Appeals. (Transcript of Record, pages 180-1.) Upon the return of the mandate to the Circuit Court, its decree was modified in accordance with the opinion of the Court of Appeals, and the modified order was then, by stipulation, entered as a final decree in the case. (Transcript, pp. 186-189.) On appeal that decree was affirmed. (Transcript, page 219.)

Counsel for petitioners have argued at length against the correctness of the decision of the Court of Appeals. This is not the question raised by the present petition; but—do the facts of the cause, as shown in the petition and supported by the transcript of the record, make a *prima facie* case for the issuance of the writ of *certiorari*?

Paragraphs 1 to 10 of counsel's argument are devoted to showing that the court decided wrongly in prohibiting the petitioners from soliciting patronage within the railroad station—that if one cabman or expressman may solicit, all may. The answer is tersely put in the opinion of the Circuit Court of Appeals:

"The company owes the duty to all persons, without discrimination, to carry them on equal terms of service and compensation. * * * But the company does not owe to its passengers the duty to provide on its trains the opportunities for them to purchase newspapers, books, fruit, and the like, or to employ the services of a stenographer or of a barber, or to buy cab or express tickets. Much less does it owe the duty to anyone to permit him to pursue his vocation on the trains. And if not on the trains, then not in the station buildings. The relation of carrier and passenger continues, not merely on the train, but within the station at the end of the journey. * * * The railroad company is a common carrier of merchandise, but is not a common carrier of common carriers of merchandise. *Express cases,* 117 U. S., 1. If it owed the duty it would have to treat all alike. Owing no duty, it may engage, or not, as it pleases, in the business of serving express companies, and may choose the company, and name the terms that are acceptable to it."

Donovan et al. v. *Pennsylvania Co.*, 120 F. R., 215.

Against the decisions of the courts of Kentucky, Montana, Indiana, Missouri and Michigan, cited on page 26 of counsels' petition, are the better reasoned opinions of the Federal Courts, the English Courts and of ten state courts in the following cases, which are arranged chronologically:

Jencks v. *Coleman,* 2 Sumn., 221; 13 Fed. Cas., 442, No. 7,258 (1835).

Barker v. *Midland R. Co.*, 18 C. B., 46; 86 Eng. C. L. R., 45 (1856).

The D. R. Martin, 11 Blatch., 233; 2 Fed. Cas., 892, No. 1,030 (1873).

Barney v. *Oyster Bay & H. S. B. Co.*, 67 N. Y., 301 (1876).

Express Cases, 117 U. S., 1 (1884).

Old Colony R. Co. v. *Tripp*, 147 Mass., 35 (1888).

Fluker v. *Georgia R. & Bkg. Co.*, 81 Ga., 461 (1889).

Griswold v. *Webb*, 16 R. I., 649 (1889).

Smith v. *New York, L. E. & W. R. Co.*, 149 Pa., 249 (1892).

New York C. & H. R. R. Co. v. *Flynn*, 74 Hun, 124; 26 N. Y. Supp., 859 (1893).

Summit v. *State*, 76 Tenn. (8 Lea), 413 (1897).

Lucas v. *Herbert*, 148 Ind., 64 (1897).

New York, N. H. & H. R. R. Co. v. *Scovill*, 71 Conn., 136 (1898).

Snyder v. *Union Depot Co.*, 19 Ohio C. C., 368 (1899).

Kates v. *Atlanta Baggage & Cab Co.*, 107 Ga., 636 (1899).

Godbout v. *St. Paul Union Depot Co.*, 79 Minn., 188 (1900).

New York, N. H. & H. R. Co. v. *Bork*, 23 R. I., 218 (1901).

Norfolk & West. R. Co. v. *O. D. Baggage Co.* (Va.), 50 L. R. A., 722 (1901).

The foregoing also answers the claim that there is a conflict between the holdings of the Court of Appeals and of the majority of the state courts.

(Brief, par. 8, page 30.)

This question, as was pointed out in the opinion, does not differ from that involved in the *Express Cases* (117 U. S., 1). It is ruled by that decision.

On the second branch of the decree, whereby the obstruc-

tion of the entrance by congregating on the sidewalk in front of and immediately adjacent to the entrance was enjoined, counsel cite no authority and indicate no error.

The relief granted has no feature of novelty, but is well within the equitable jurisdiction of the Federal Courts and its customary exercise. It merely protects the rights of access and the easements appurtenant to the complainant's railroad station, without which not only the pecuniary value but the actual estate would be lessened. The complainant claimed no right, and the decree appealed from sustains no right, to the control of the sidewalk abutting its station, either for the benefit of complainant or for its licensees. The decree merely forbids the forty petitioners from congregating and soliciting the custom of passengers in such numbers at the entrance to the railroad station as will interfere with and obstruct the ingress and egress of passengers and employes. Counsel suggest no reason for the denial of such relief.

Counsel's claim that there is a conflict between the law as expounded in the opinion of the Court of Appeals and by the Supreme Court of Illinois is not sustained. The question of the right of every licensed cabman to enter a railroad station and there ply his vocation, if the owner of the station permits any cabman therein, has not been before the Illinois courts. The only question involved in *Pennsylvania Company* v. *Chicago,* 181 Ill., 289, was the validity of an ordinance establishing a cab stand beginning 110 feet north of the entrance to the station in question.

On the second point, the Supreme Court of Illinois has repeatedly sustained the right of an owner of property to prevent by injunction any substantial infringement upon his rights and easements of access.

See

Carter v. *Chicago,* 57 Ill., 283, 287.

Field v. *Barling*, 149 Ill., 556, 561, 563-71.
Newell v. *Sass*, 142 Ill., 104.

And in the very *Pennsylvania case*, 181 Ill., 289, at page 298, the court said: "It does not appear that ingress to and egress from complainant's property is prevented in connection with the complainant's building."

While counsel assert the importance of the questions involved,—the "public interests and the interests of judisprudence," to be affected,—they do not appear upon a simple statement of the issues. Seemingly, the questions decided are private and local,—and neither novel, nor of general importance. As there appears no sufficient reason for the issuance of the writ prayed, we respectfully ask that it be denied.

FRANK J. LOESCH,
EDGAR A. BANCROFT,
CHARLES F. LOESCH,
Of Counsel for Respondent.

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Clerk.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1904.

No. 115 5.

HARRY DONOVAN, et al., *Petitioners*, vs. **PENNSYLVANIA COMPANY**, *Respondent.*	Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

STATEMENT AND BRIEF FOR RESPONDENT.

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Counsel for Respondent.

THE GUNTHORP-WARREN PRINTING CO. 118 RANDOLPH ST., CHICAGO.

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1904.

No. 115.

HARRY DONOVAN, et al.,
Petitioners,
vs.
PENNSYLVANIA COMPANY,
Respondent.

Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

RESPONDENT'S STATEMENT OF CASE.

The bill filed in this case by the respondent, a citizen of Pennsylvania, against petitioners, citizens of Illinois, in the United States Circuit Court for the Northern District of Illinois, on February 27, 1902 (Rec., 3 to 15), alleges the jurisdictional facts, and states with particularity its possession and ownership of an extensive passenger station and grounds on the east side of Canal street between Madison and Adams streets, in the City of Chicago, which are devoted to the usual purposes of such a terminal; that it serves the pas-

senger traffic of five trunk line railroads, including respondent's, terminating in Chicago, and that the main passenger entrance upon Canal street is constantly thronged with a daily average of 30,000 incoming and outgoing passengers, in addition to its employes and the public coming and going with said passengers or having business at said station; that said main entrance is at the head of a flight of stairs leading down to the station platform upon which trains arrive and depart; that said main entrance consists of a center opening five feet wide and two side openings, each of the same width; that practically all the passengers coming into or leaving said station pass through the center opening of said exits onto the street, and that upon the arrival of trains discharging their passengers the stairway leading through said doors and through onto the sidewalk, is densely crowded with passengers and the public passing out, and it is likewise crowded throughout each day by passengers and the public passing into said station prior to the departure of trains; that an average of 257 passenger trains each day arrive and depart at said station, substantially all of them between six A. M. and eleven thirty P. M., and such number of trains arriving and departing keeps in constant use the said main passenger entrance for the thousands of arriving and departing passengers; that the sidewalk in front of said main entrance and openings to the station, is only of the clear width of twelve feet, as prescribed by ordinance of the said City of Chicago; and that upon the east side of Canal street at said main entrance door and for a short distance north and south are tem-

porarily stationed preceding the departure and arrival of the various trains, omnibuses which have brought and discharged interstate passengers from other passenger stations, and passengers from hotels, and are waiting for other interstate passengers destined for other railroads whose terminals are at one or the other of the five great passenger stations in the City of Chicago, or whose destination is at hotels in the said city; said omnibuses being engaged only in transporting through passengers between said stations and between said stations and hotels.

That the remainder of the frontage of said station north and south of said main entrance has many openings for the reception and delivery of baggage, one entrance to the ladies room near the corner of Adams street, and two entrances direct to the railroad platform within 200 feet north of Adams street, and the entire street frontage for a distance of about 300 feet north of Adams street and 150 feet south of Adams street is in constant use by t[illegible] arriving and departing passengers and public, a[illegible]by vehicles discharging and receiving passengers and baggage, express, mail and other freight.

That every part of said station and the free and unobstructed use of all entrances and exits thereof, and the sidewalks and street adjacent to such entrances and exits, are necessary for the proper transaction of the ordinary daily business of respondent, and to properly afford to all passengers, the public and employes, the usual and convenient facilities incident and appurtenant to such passenger station; that for the purpose of providing convenient means of

transfer for through passengers between that station and other stations, and for local passengers to places in the City of Chicago, respondent has arranged with the Parmelee Company to furnish busses to transport through passengers between that station and all other stations and hotels, and to furnish cabs and carriages between that station and all points in the city; and that to carry out this arrrangement, such busses immediately preceding the departure and arrival of trains, temporarily stand opposite the said main entrance with proper uniformed attendants, and other agents of the Parmelee Company are given space in said station at convenient points near said entrance, to inform and assist such passengers as have through tickets entitling them to be carried free on said busses, and to solicit the patronage of other passengers desiring transfer by such busses or by cabs and carriages; and has furnished the Parmelee Company space upon the respondent's ground near Madison street, on which to stand their cabs and carriages which are called by an electric signal as desired by arriving passengers; that under these arrangements only lawful rates, as fixed by the city ordinances are to be charged, and the granting of these exclusive privileges is a source of income to the respondent.

It is further alleged, that about 200 feet north of such main entrance, and on the east side of Canal street, there is established a public cab stand under an ordinance of the City of Chicago, at which the petitioners, who are drivers and owners of cabs, carriages and express wagons, may stand their vehicles and solicit patronage; that the petitioners, some forty in

number, are members of a cabmen's union and claim that they have severally precisely the same right to enter said passenger station at all times and to solicit patronage from incoming passengers there as is granted to and enjoyed by the Parmelee Company; that this right is denied by the respondent and the petitioners have severally been notified not to enter upon said station grounds at any time for the purpose of soliciting patronage from passengers; but the right is freely granted to them to enter all portions of said station to which the public has access, for the purpose of performing any contractual duty which such petitioners at any time hold toward any passenger coming to or going from said station.

The bill further charges:

First, that said petitioners by twos and threes in pursuance of their claimed right and in violation of the respondent's orders to them, constantly and repeatedly enter into and upon said station building and remain there for the purpose of soliciting, and do constantly solicit there the patronage of arriving passengers, to the annoyance and confusion of the passengers and to the serious damage of the respondent, and interfere with its agents and employes in the performance of their duties to such passengers. And in order to make such interference the greater, the petitioners wear a uniform cap for the purpose of persuading passengers that they are there by right, and with the consent and approval of the respondent, as the representatives or agents of a duly authorized transfer company, and having upon such caps the word "Cab Agent."

Second, that said petitioners *in large numbers, in groups of from eight to twenty persons,* gather at said main entrance immediately outside thereof, and upon the sidewalk, and ply their vocation as cabmen, expressmen and hotel runners, in a boisterous and unseemly manner, and seriously obstruct said station entrance, jostle and crowd against the passengers, interfere with the performance of their duties by said agents of the Parmelee Company, and deprive the respondent, its passengers, patrons, employes and agents of the free exercise of their rights of ingress and egress at said station, and by their filthy habits, befoul with tobacco juice said entrance and the sidewalk adjacent thereto.

That the respondent has caused frequent complaints under oath to be made before a police magistrate of the City of Chicago against certain of the petitioners who have entered respondent's said station to solicit custom of incoming passengers without respondent's consent; and has caused warrants to be issued against such petitioners; that in some instances petitioners were adjudged guilty and fined, and then took appeals from such fines and immediately thereafter entered said station and again plied their vocation, and upon being re-arrested, were discharged by the police magistrate upon verdicts of juries, and that after numerous arrests and numerous prosecutions of petitioners and their being discharged, respondent alleges that further prosecutions at law against petitioners, or any of them, would be burdensome and expensive to respondent, and fruitless.

That respondent had appealed to the superintend-

ent of police of the City of Chicago for protection against the actions of petitioners, and to prevent said petitioners from obstructing the entrance to said station, and from blocking and obstructing the sidewalk in front of said entrance, or any part thereof, whilst engaged in soliciting custom, and to prevent said petitioners from entering respondent's station to solicit patronage for their said cabs and carriages, but that the superintendent of police had been advised by the corporation counsel of the City of Chicago that he had no right to afford respondent such protection, and that the petitioners had full legal right and authority to congregate in front of respondent's passenger station, and to there ply their said several businesses aforesaid, and to enter respondent's station and there ply their business of soliciting custom,—respondent's property rights within said station, and its right of access in the sidewalk and street abutting said main entrance, to the contrary notwithstanding.

That respondent has paid large sums of money, aggregating over $300,000, for the purchase of real estate for the use of its said station, because of the valuable frontage of Canal street and the abutter's rights of access therein, and has expended a sum exceeding half a million dollars for the erection of said passenger station with all the necessary appurtenances thereto belonging, in order to furnish the necessary facilities incident to the operation and maintenance of said station, and for the proper conduct of the business thereof.

That by the acts of said petitioners, great and substantial damages are inflicted upon respondent's prop-

erty different in kind and degree from that suffered by the general public, and incapable of computation, and which cannot be compensated at law.

That the petitioners are financially irresponsible, and any judgment obtained by respondent against any of the petitioners for damages for trespass upon respondent's property could not be collected upon execution; and that if respondent sought a remedy at law for damages, it would be wholly ineffectual, as a multiplicity of suits would have to be instituted and conducted at great cost and delay to respondent, but without securing to it any beneficial results or protection to its property; that the damage to respondent, and its said property rights caused by the said trespasses and actions of said petitioners, is direct, serious and irreparable, but is not susceptible of proof upon any money basis in an action at law according to the ordinary rules of evidence; that by reason of the facts stated it has no plain or adequate remedy at law against the aforesaid trespasses and injuries by the petitioners, and is without power at law to protect its property rights in its said station and the easements of access thereto belonging, and its injuries are relievable only in a court of equity.

Said allegations of the bill were fully supported by nineteen affidavits, describing in detail the character of the trespasses in the building and the obstructions of its entrances and of the sidewalk abutting the main entrance, and giving numerous instances of interference by the petitioners with use of said station property, and the illegal use and obstruction of the sidewalk, at its entrance, and the interference with the use thereof by passengers, employes and licensees.

The answer and affidavits of petitioners admitted the entrance into the station by petitioners, by twos and threes, to solicit custom for cabs and carriages, and justified it on the ground that they had the legal right to the same advantages and privileges in the station as were granted to any other cabmen or expressman. They based this claim upon the opinion in *Pennsylvania Co.* v. *Chicago*, 181 Ill., 289, although the answer admits that the respondent had refused to permit the petitioners to stand in said station to solicit patronage, or to congregate in front of the main entrance upon the sidewalk to ply their trade or vocation as hackmen, hotel runners and expressmen.

Upon the second point, the answer denies in general terms all obstructions of the sidewalk in front of the entrance. It asserts that the respondent has no right to control said entrance, and that the petitioners have not plied their trade in an improper manner, but the noise and confusion have been made by the employes of the Parmelee Company, and that said company has and can have in and at said station no rights superior to those of the petitioners. Supporting the answer are the affidavits of eleven proprietors of saloons, restaurants and cigar stands on the west side of Canal street opposite said station, that they have never observed any obstructions of such main entrance, or boisterous conduct, or any acts injuring the respondent's property, or amounting to a nuisance; and also the affidavits of four of the petitioners that two cabmen at a time stand inside the entrance to solicit business in competition with the Parmelee agents, and that only two or three stand outside to signal to the cabmen

down on the stand to bring up their cabs when one of the petitioners secures a passenger; and that there is no pollution of the sidewalk or entrance with tobacco juice, etc. By stipulation of counsel the hearing upon the affidavits was made a final hearing as upon evidence duly taken and a final decree was entered as prayed, perpetually enjoining the petitioners from continuing the trespasses and obstructions complained of. And this decree was affirmed by the Court of Appeals. (120 F. R., 215.)

Many matters are stated and discussed in the argument in behalf of the petitioner which are not involved in the decree to review which this writ was granted.

The decree enjoins the petitioners herein:

First. From entering the respondent's Union Passenger Station at Chicago, Illinois, for the purpose of soliciting therein the custom of incoming passengers for cabs or carriages.

Second. From congregating in such numbers, upon the sidewalk immediately in front of the main entrance of the railway station for the purpose of soliciting incoming passengers for their cabs, carriages, express wagons and hotels as to obstruct the ingress and egress of passengers and employes of the respondent at said station.

No other rights were asserted in the bill filed by respondent than the two rights,—the interference with which the court enjoins as above. The right of the petitioners to occupy cab stands in the street adjacent to the station was not questioned, and the right of the Parmelee Transfer Company to occupy portions of

the street there for its vehicles and to place its employes near them on the sidewalk was not asserted by the bill and neither was involved in the final decree.

Respondent neither claimed nor claims, either for itself or for the Parmelee Transfer Company any right to occupy either the street with vehicles or the sidewalk in front of the entrance with solicitors. It does claim, and the lower court sustained the claim, that it has the right to exclude from its passenger station, all cabmen, hotel runners and expressmen, who would ply their vocation there without its permission, and that its right to exclude petitioners is not affected by its permitting the Parmelee Company under proper agreement and regulations to there solicit passengers for its cabs.

It also claimed protection of its rights of access at the main entrance, from the repeated obstructions by persons, neither passengers of its railroad nor intending to become such, and who used the sidewalk in front of the main entrance as a place for carrying on private business, namely, soliciting patronage for cabs, hotels and express wagons.

The ordinance of the City of Chicago upon which so much emphasis is laid (Trans., 160-162; brief, pp. 11, 23, 25, 29 to 32, inclusive) has no relation whatever to the right of the petitioners to either enter the station or to congregate upon the sidewalk at its entrance, to solicit custom. It purports to permit the standing of cabs and carriages in the streets at railroad stations for ten minutes before the arrival of passenger trains; it gives no authority to the drivers to congregate upon the sidewalk at the entrance of such sta-

tions. Therefore, counsel's discussion of the police powers of the city, and its exclusive control of the streets, is inapt, and needs no answer.

Counsel for petitioner repeatedly charge or intimate that the bill was filed in the interest of the Parmelee Company. Such charge has no substantial foundation in the record or in fact. The bill was filed, as it clearly shows upon its face, to protect respondent in its important and valuable property rights, in which its patrons and passengers and employes are also interested to the extent of having a free and unobstructed passage into and out of said station and over the sidewalk and street abutting said entrance.

The eighth assignment of errors appearing in counsel for petitioners' brief is substantially their ninth assignment in the court below on April 10, 1903 (Rec., 193), which was on April 30, 1903, dismissed by stipulation. (Rec., 216.) Therefore, its appearance in the brief is no doubt due to the oversight of counsel and we need not refer to it further.

The only propositions involved on this review are, therefore:

1. That the respondent has the right to exclude from its station all persons coming there to solicit patronage for cabs, carriages, hotels and express wagons, without its consent; and that it may give such consent to one person or company to the exclusion of all others.

2. As to the obstructions to the entrance:

(a) That the respondent has the right to prevent cabmen, expressmen and hotel runners from assembling in such numbers at its main entrance and there plying their vocations upon the sidewalk as will ob-

struct such entrance, and prevent the free ingress and egress of passengers, patrons and employes of the respondent having occasion to use said entrance.

(b) That from the evidence and admissions and by the finding and decree of the Circuit Court, and the affirmance thereof by the Circuit Court of Appeals, it affirmatively appears that the petitioners were guilty of the trespasses and obstructions charged in the bill of complaint, and are threatening to continue the same.

3. That these rights of the respondent, and the violations thereof by the petitioners, being established, equity will grant the appropriate remedy by injunction, as there is no adequate remedy at law.

I.

CABMEN AND EXPRESSMEN HAVE NO RIGHT TO ENTER A RAILROAD STATION FOR THE PURPOSE OF SOLICITING PATRONAGE THERE WITHOUT THE CONSENT OF THE RAILROAD COMPANY.

THE STATIONS, LIKE THE RAILROADS, ARE IMPRESSED WITH A PUBLIC USE AND ARE OPEN TO ALL HAVING CONTRACTUAL RELATIONS WITH THE COMPANY OR ITS PASSENGERS; BUT THIS DOES NOT EMBRACE THE RIGHT TO CARRY ON ANY PRIVATE BUSINESS IN ANY STATION OR TRAIN WITHOUT THE CONSENT OF THE COMPANY. IT MAY GRANT AN EXCLUSIVE LICENSE TO ONE PERSON TO SOLICIT CUSTOM OF INCOMING PASSENGERS IN ITS STATION, AND EXCLUDE ALL OTHERS FROM THE LIKE PRIVILEGE.

Jencks v. *Coleman*, 2 Sumner, 221 (13 Federal Cases, 442) (A. D. 1835).

Commonwealth v. *Powers*, 7 Met., 596 (1844).

Barker v. *Midland Ry. Co.*, 18 C. B., 46 (86 E. C. L. R., 45), 1856.

Marriott v. *London & S. W. R. Co.*, 1 C. B. (N. S.), 499; 87 E. C. L. R., 498 (1857).

Beadell v. *Eastern Counties Ry. Co.*, 2 C. B. (N. S.), 509; 89 E. C. L. R., 509 (1857).

Painter v. *London, etc., Ry. Co.*, 2 C. B. (N. S.), 702; 89 E. C. L. R., 701 (1857).

Barney v. *D. R. Martin*, 11 Blatch., 534 (2 Fed. Cases, 892 (1873).

Barney v. *Oyster Bay Steamboat Co.*, 67 N. Y., 301 (1876).

Express Cases, 117 U. S., 1 (29 L. Ed., 801) (1886).

Old Colony R. Co. v. *Tripp*, 147 Mass., 35 (17 N. E., 89) (June 1, 1888).

Commonwealth v. *Carey*, 147 Mass., 40 (17 N. E., 97) (June 2, 1888).

Fluker v. *Georgia Railroad Co.*, 81 Ga., 461 (January 21, 1889).

Griswold v. *Webb*, 16 R. I., 649 (7 L. R. A., 302) (Nov. 30, 1889).

Chicago, St. Louis & N. O. R. R. Co. v. *Pullman Southern Car Co.*, 139 U. S., 79 (35 L. Ed., 97) (1891).

Smith v. *N. Y., L. E. & W.*, 149 Pa. St., 249 (24 Atl., 304) (May 23, 1892).

N. Y. Cent. R. Co. v. *Flynn*, 74 Hun., 124 (26 N. Y. Supp., 859) (December 6, 1893).

N. Y. Cent. R. Co. v. *Sheeley*, Hun. (27 N. Y. Supp., 185) (December 6, 1893).

Brown v. *N. Y. Cent. Ry. Co.*, 75 Hun., 355 27 N. Y. Supp., 69), January 18, 1894 (affirmed by Court of Appeals, without opinion in 46 N. E., 1145, February 12, 1897).

Summitt v. *State*, 76 Tenn., 413 (41 Am. Rep., 637).

Lucas v. *Herbert*, 148 Ind., 64 (37 L. R. A., 376) (May 21, 1897).

N. Y. R. R. Co. v. *Scovill*, 71 Conn., 136 (42 L. R. A., 157) (October 5, 1898).

Snyder v. *Union Depot Co.*, 19 Ohio Circuit Ct., 368 (January term, 1899).

Kates v. *Cab Co.*, 107 Ga., 636 (46 L. R. A., 431) (July 21, 1899).

Godbout v. *St. Paul Union Depot*, 79 Minn., 188 (47 L. R. A., 532) (February 16, 1900).

N. Y. Cent. R. Co. v. *Warren*, 64 N. Y. Supp., 781 (May term, 1900).

Boston & Albany R. Co. v. *Brown*, 177 Mass., 65 (58 N. E., 189) (October 18, 1900).

Boston & Maine R. Co. v. *Sullivan*, 177 Mass., 230 (58 N. E., 689) (December 8, 1900).

N. Y., etc., R. Co. v. *Bork*, 23 R. I., 218 (49 Atl. Rep., 965) (July 22, 1901).

St. Louis Drayage Co. v. *Louisville & Nashville R. Co.*, 65 Fed., 39 (1894).

Pennsylvania Co. v. *Donovan*, 120 Fed., 215.

Hedding v. *Gallagher*, 72 N. H., 377 (64 L. R. A., 811) (57 Atl. R., 225) (1903.

II.

A. RESPONDENT HAS THE LEGAL RIGHT TO FREE AND UNOBSTRUCTED ENTRANCE TO ITS PASSENGER STATION FROM CANAL STREET; SUCH RIGHT IS A PROPERTY RIGHT; AND THE OBSTRUCTION OF SUCH ENTRANCE BY THE PETITIONERS GATHERING THERE IN LARGE NUMBERS TO PLY THEIR VOCATIONS, IS A PRIVATE NUISANCE.

B. THE ALLEGATIONS OF RESPONDENTS' BILL ARE FULLY SUSTAINED BY THE PROOF.

Benjamin v. *Storr, L. R.*, 9 Com. Pl., 400.

Lyon v. *Fishmongers Co.*, 1 App. Cases (H. L.), 662.

Fritz v. *Hobson L. R.*, 14 Ch. Div., 542.

Jaques v. *Natl. Exhibit Co.*, 15 Abb. N. C., 250.

Hallock v. *Scheyer*, 33 Hun., 111.

Flynn v. *Taylor*, 53 Hun., 167.

Callanan v. *Gilman*, 107 N. Y., 360 (1 Am. St. Rep., 831).

Cohen v. *Mayor*, 113 N. Y., 532.

Flynn v. *Taylor*, 127 N. Y., 596.
Carter v. *Chicago*, 57 Ill., 283.
Field v. *Barling*, 149 Ill., 557.
Newell v. *Sass*, 142 Ill., 104.
Hart v. *Buckner*, 54 Fed., 925.
McDonald v. *Newark*, 42 N. J. Eq., 136.
2 Dillon on Mun. Corp., 4th Ed., Sec. 587; n., 656a.
1 Lewis on Eminent Domain (2nd Ed.), pp. 170 to 196.
1 Am. & Eng. Corp. Rep., 47.
1 Am. & Eng. Ency. of Law, 2nd Ed., 225, 238.
Elliott on Roads, 2nd Ed., p. 761.
Branahan v. *Hotel Co.*, 39 Ohio St., 333.
Lahr v. *Metropolitan El. R. Co.*, 104 N. Y., 268.
Hedding v. *Gallagher*, 72 N. H., 377 (64 L. R. A., 811); 57 Atl., 225.

III.

INJUNCTION IS THE ONLY ADEQUATE REMEDY IN THE CASE AT BAR.

1 Spelling on Injunctions, 2nd Ed., Sec. 338, 340.
I Am. & Eng. Ency. Law, 2nd Ed., 225.
2 Lewis on Eminent Domain, 2nd Ed., Sec. 638.
1 High on Injunctions, Sec. 816, 820.
Hilliard on Injunctions, 2nd Ed., Sec. 328.
2 Dill. on Mun. Corp., 4th Ed., Sec. 661.
Elliott on Roads, 2nd Ed., Sec. 709.

Penna. Co. v. *Chicago*, 181 Ill., 289.
Carter v. *Chicago*, 57 Ill., 283.
Edwards v. *Haeger*, 180 Ill., 99-108.
Lowery v. *Pekin*, 186 Ill., 387.
Chicago Gen. Elec. Ry. Co. v. *C., B. & Q.*, 181 Ill., 605-611.
London & N. W. R. Co. v. *Lancashire & Yorkshire Co.*, L. R. 4 Eq. Cases, 174-178.
N. Y. Cent. R. Co. v. *Flynn*, 74 Hun., 124.
Brown v. *N. Y. Cent. R. Co.*, 75 Hun., 355, affirmed, 46 N. E., 1145.
N. Y. Cent. R. Co. v. *Sheeley*, 27 N. Y. Supp., 185.
N. Y. Cent. R. Co. v. *Warren*, 64 N. Y. Supp., 781.
Snyder v. *Union Depot Co.*, 19 Ohio Cir. Ct., 368.
N .Y., etc., R. Co. v. *Scovill*, 71 Conn., 136 (42 L. R. A., 157).
Boston & Maine R. Co. v. *Sullivan*, 177 Mass., 230 (58 N. E., 189).
Goodson v. *Richardson*, 9 Ch. App., 221.
Seattle Gas & Electric Co. v. *Citizens Light & Power Co.*, 123 Fed., 588.

I.

CABMEN AND EXPRESSMEN HAVE NO RIGHT TO ENTER A RAILROAD STATION FOR THE PURPOSE OF SOLICITING PATRONAGE THERE WITHOUT THE CONSENT OF THE RAILROAD COMPANY

THE STATIONS, LIKE THE RAILROADS, ARE IMPRESSED WITH A PUBLIC USE AND ARE OPEN TO ALL HAVING CONTRACTUAL RELATIONS WITH THE COMPANY OR ITS PASSENGERS; BUT THIS DOES NOT EMBRACE THE RIGHT TO CARRY ON ANY PRIVATE BUSINESS IN ANY STATION OR TRAIN WITHOUT THE CONSENT OF THE COMPANY, AND IT MAY GRANT AN EXCLUSIVE LICENSE TO ONE PERSON TO SOLICIT CUSTOM OF INCOMING PASSENGERS IN ITS STATION, AND EXCLUDE ALL OTHERS FROM THE LIKE PRIVILEGE.

The cases relied upon by petitioners' counsel in their brief to support their contention that appellants have a right to enter the railroad station and there solicit custom of incoming passengers, are as follows:

Montana Ry. Co. v. *Langlois,* 9 Mont., 419 (8 L. R. A., 753) (May 1, 1890).

Cravens v. *Rogers,* 101 Mo., 247 (14 S. W. Rep., 106) (June 30, 1890).

Kalamazoo Hack Co. v. *Sootsma,* 84 Mich., 104 (10 L. R. A., 819) (December 24, 1890).

McConnell v. *Pedigo,* 92 Ky., 465 (1892).

Lindsey v. *Anniston,* 104 Ala., 257 (27 L. R. A., 436) (August 10, 1894).

Mississippi v. *Reid,* 76 Miss., 211 (43 L. R. A., 134) (December 19, 1898).

Indianapolis Union Ry. Co. v. *Dohn,* 153 Ind., 10 (45 L. R. A., 427) (May 23, 1899).

Penna. Co. v. *Chicago,* 181 Ill., 289 (Oct. 16, 1899).

We will hereinafter discuss and distinguish the above cases, but before doing so, we will cite the authorities, English, Federal and State, both prior and subsequent to the decisions relied on by the petitioners, all of which authorities with remarkable unanimity sustain the above proposition of law.

It is a remarkable fact, which a chronological study of the cases discloses, that the decision by Mr. Justice STORY in *Jencks* v. *Coleman*, 2 Sumner, 221, decided in 1835, led all the English and American cases on this subject, and is the law to-day. That case and *Barney* v. *Oyster Bay Steamboat Co.*, 67 N. Y., 301, decided in 1876, cited by the Supreme Court of Massachusetts in the *Tripp* case, are directly in point, and against petitioners' contention.

In *Jencks* v. *Coleman*, 2 Sumner 221, Daniel Webster appeared for the plaintiff, and Circuit Justice STORY charged the jury that a steamboat line might properly make a contract with a connecting stage coach line, giving it the exclusive right to solicit passengers on its boats for the stage line, and it could refuse to accept for carriage on its boat, though he had a ticket, a person who came solely to solicit patronage for a rival stage line. It was urged that the steamboat company was not bound to transport passengers beyond its line, and Webster requested a charge that the exclusive privilege could not be defended unless it was necessary or expedient in the public interest. But the court held *contra*. That it was sufficient if the contract "was entered into by the steamboat proprietors *bona fide* and purely for the purpose of their own interest and the accommodation of the public from their belief of its necessity or utility."

The next case involving this question was decided in 1844, *Commonwealth* v. *Powers*, 7 Met., 596, 601, 604. The defendant was arrested for an assault upon a solicitor for a tavern, who was expelled with force from a railroad platform of which defendant had charge, after notice that the solicitor would not be admitted. It appeared that the solicitor had a ticket and was intending to become a passenger, but he did not disclose this to Powers. *Held*, that the railroad company as the owner of the station had authority to make reasonable regulations in regard to the use thereof, and their reasonableness must be judged of with reference to the particular station as to whether there is a great throng of passengers or not using the same. Such regulations need not be by by-laws, but may be made as an individual would make them who owned the station and cars. The court by SHAW, C. J., said:

"That a railroad corporation is to be deemed a carrier of passengers and is subject to the duties and entitled to the privileges and powers incident to such employment, seems to be settled by various cases. * * * They are, in this respect, on a footing with the owners of steamboats. * * *

An owner of a steamboat or railroad company, in this respect, is in a condition somewhat similar to that of an inn-keeper, whose premises are open to all guests. Yet, he is not only empowered, but he is bound so to regulate his house, as well with regard to the peace and comfort of his guests who there seek repose as to the peace and quiet of the vicinity, as to repress and prohibit all disorderly conduct therein. And of course he has a right, and is bound, to exclude from his premises all disorderly persons, and all persons not conforming to regulations necessary and proper to secure such quiet and good order." (Page 601.)

To the claim that the opening of a station gave an implied license to all persons to enter, the court said:

"But all such licenses are in their nature revocable. And if actually revoked, and due notice given to an individual or class of individuals, and they still persist in entering it is without license and the owner has a right to exclude them by force, if necessary. * * * Without such a power, the business could not be carried on; because the crowd of persons entering without intending to take passage might be so great as to exclude passengers." (Page 602.)

The court further held, that if solicitors for inns thronged the entrance or plied their vocation in such a manner as to annoy passengers or hinder or interrupt the officers of the corporation in the performance of their duties, "then a prohibition of such persons from entering upon the platform is a reasonable and proper regulation." (p. 603.)

Said Massachusetts decision was in chronological order followed by *Barney* v. *The Martin*, 11 Blatch., 233, 234-6 (Fed. Cases, 1030), decided in 1873. A boat was libelled in admiralty, on account of the exclusion of a passenger who was soliciting express business on the boat in violation of orders, and a recovery was had for $500 in the District Court. On appeal, HUNT, Cir. J., reversed the judgment, saying:

"A public conveyance of this character is not, however, intended as a place for the transaction of the business of the passengers. The suitable carriage of persons or property is the only duty of the common carrier. A steamboat company or a railroad company is not bound to furnish traveling conveyances for those who wish to engage on their vehicles in the business of selling books, papers or articles of food, or in the business of receiving and distributing parcles of baggage, nor to permit the transaction of this business in their vehicles when it interferes with their own interests. If a profit may arise from such business, the benefit

of it belongs to the company, and they are entitled to the exclusive use of their cars for such purposes. This seems to be clear both upon principle and authority." * * *

"The case of *New Jersey Steam Nav. Co.* v. *Merchants Bank*, 6 How., 356 (47 U. S.), shows that it is specially applicable to those seeking to do an express business on such conveyances. * * *Although they may have no custody or control of the goods, they are liable to the owner in case of loss, if they allow them to be brought aboard."

To the claim that another agent was permitted to carry on the same business, the court said (italics being ours):

"The rights of the carrier in respect to A are not gone or impaired for the reason that he waives his rights in respect to B, especially if A be notified that the rights are insisted upon as to him. If Mr. Prime was permitted to carry a bag without charge on the defendant's boat, and to do a limited express business thereon, this gives the libellant no right to do such business, when notified by the carrier that he must refrain from it. A carrier, like all others, may bestow favors where he chooses. * * *

The incidental benefit arising from the transaction of such business as may be done on board a boat or a car belonging the carrier, and he can allow the privilege to one and exclude it from another at his pleasure. * * *

This individual is under their control, subject to their regulations, and the business interferes in no respect with the orderly management of the vehicle. But, if every one that thinks fit can enter upon the performance of these duties, the control of the vehicle and the good management would soon be at an end. The cars or boats are that of the carrier, and I think exclusively are for this purpose. *The sale or leasing of these rights to individuals and the exclusion of others therefrom come under the head of reasonable regulations, which the courts are bound to enforce. The right of trans-*

portation, which belongs to all who desire it, does not carry with it a right of traffic or business."

In *Barney* v. *Steamboat Co.*, 67 N. Y., 301-3, decided in 1876, the action was brought for refusing the plaintiff passage on the defendant's boat, on which he had formerly been accustomed to travel to solicit orders for delivery of passengers' baggage. He was ordered to cease soliciting, as the license to carry on this business had been revoked and granted to another person. Judgment for the defendant was affirmed. The court, by ANDREWS, J., said:

"A carrier may establish, for the convenience of passengers and for his own profit on his car or vessel, an agency for the delivery of baggage of passengers, and exclude all other persons from entering to solicit or receive orders from passengers, in competition with the agency established by him. This is in no just sense a monopoly. It is simply saving to the carrier a legitimate advantage which his position in business gives him."

In what are well known to the bench and bar as the "Express Cases," 117 U. S. 1, decided in 1886, this court, in defining the duties of railroads as common carriers, said on page 11:

"So long as the public are served to their reasonable satisfaction, it is a matter of no importance who serves them. The railroad company performs its whole duty to the public at large and to each individual when it affords the public all reasonable express accommodations. If this is done, the railroad company owes no duty to the public as to the particular agencies it shall select for that purpose. The public require the carriage, but the company may choose its own appropriate means of carriage, always provided they are such as to insure reasonable promptness and security."

In *Old Colony R. Co.* v. *Tripp* (1888), 147 Mass., 35, 38, 40, an action in trespass was brought by the company against the defendant, a solicitor of baggage, for trespassing upon the station grounds by plying his vocation, after being notified that the exclusive privilege had been granted to another baggageman.

The Supreme Court (Justices Morton, Field and Devens dissenting), followed the English cases cited in the brief, *supra*, under a similar act (17 and 19 Vict. C. 31), and held that such a contract and its enforcement was not a violation of the Massachusetts Statute requiring railroad corporations to give all persons "reasonable and equal terms, facilities and accommodations for the transportation of themselves * * * and of any merchandise * * * and have the use of depot and other buildings and grounds," and said:

"The statute applies only to relations between railroads as common carriers and their patrons. It does not enact that a license given by a railroad company to a stranger shall be a license to all the world. If a railroad company allows a person to sell refreshments or newspapers in its depots, or to cultivate flowers on its station grounds, the statute does not extend the same right to all persons. If a railroad company, for the convenience of its passengers, allows a baggage expressman to travel in its cars to solicit the carriage of the baggage of passengers, or to keep a stand in its depots for receiving orders from passengers, the statute does not require it to furnish equal facilities and conveniences to all persons."

In that opinion, the distinction between the right of a cabman to receive and deliver passengers at a station, and his right to solicit patronage there, is clearly

pointed out, and the English cases supporting the distinction are cited.

It is from the dissenting opinion of FIELD, J., *in this case* (*p.* 43), *that Mr. Justice* PHILLIPS *quotes, in Penn. Co.* v. *Chicago*, 181 *Ill.*, 301; *and the quotation is made as though taken from the opinion of the court.*

In *Kates* v. *Atlanta Bag & Cab Co.*, 107 Ga., 636, 642-3, the cases *pro* and *con* are collected and distinguished. A cabman and expressman filed a bill to enjoin the owners of the Union Station at Atlanta, from giving, and the cab company from receiving, the exclusive right of boarding all passenger trains, enjoying full access to the passenger station and occupying an office in the baggage room, for the purpose of soliciting baggage from passengers. The railroad company received pay for these exclusive privileges, while the plaintiff was excluded therefrom, and from the station.

The lower court denied the injunction. On appeal it was found that four exclusive privileges were granted to the cab company, viz: (1) soliciting on trains; (2) soliciting in the passenger station; (3) use of an office in the baggage room; and (4) checking baggage from residences and hotels, for carriage on railroads. The court by LITTLE, J., said (p. 643):

"*It cannot successfully be maintained that the grant of these privileges to a cab company is in violation of law nor do the concessions of themselves create a monopoly, nor are they in any sense an interference with the right of the traveling public.* On the contrary, it will be recognized that the exercise of the facilities named tends to the public convenience and the prompt and safe handling of the baggage of the passenger. * * *

The merit of his complaint, if any exists, must be

found in the fact of the refusal of the defendants to grant to him the opportunities so to serve the public and thereby better his business. Whether the refusal so to do is proper or unlawful does not depend upon the favor or inclination of the railroad company, but upon plaintiff's rights. If it should depend upon favor, then the plaintiff in error has no cause of complaint, because favor is essentially free and voluntary and may not be demanded."

To the claim that the exclusive grant created a monopoly, the court said that the railroad at common law was bound to serve the public equally and justly, and that it could not in performance of its duty as a common carrier discriminate against any passenger. "But," says the court, p. 646:

"This rule of impartiality applies to railroad companies in their public capacity, and it by no means follows that such reasonable rules and regulations which a carrier may make for the protection of its property, or for the safe conveyance of its passengers or freight, are subject to the same unqualified condition."

Following the reasoning in *Fluker* v. *Ga. R. Co.*, 81 Ga., 461 (in which it was held that the business of selling lunches to passengers was not one which any member of the public might engage in on railroad property), the court said, p. 648:

"The Union Passenger Station belongs to the railroad companies and not to the public at large. It is perfectly true that the use which such ownership carries is a public use, that is to facilitate and expedite the duties which their charters and the law imposes on the owner. It would then follow that no orderly person entitled to be transported on a train leaving the station could lawfully be excluded from entering it for that purpose. But because the use by the owner is for the purpose of the public, no reason is afforded

why as a matter of law an individual might occupy it to transact his private business."

Finally, as to the *exclusive* right, the court said:

"In the very nature of things it would be impossible for a railroad company to permit the agents of all baggage or express companies to enter its trains to solicit the transportation of baggage, and yet because of such impossibility it would hardly be fair to the traveling public to refuse to permit the agent of any to do so."

This distinction is also well made by the decision in *Griswold* v. *Webb*, 16 R. I., 649, decided in 1889. That was an action for trespass by the owner of a wharf against a hackman who stood at a point forbidden by the regulations. It appeared that the defendant had an engagement with an infirm lady, and that he drove upon the wharf in order to meet her and save her difficulty in reaching his carriage. The court said:

"But the company has the right to say that no business of any other character shall be carried on within the limits of its property. It has the right to say that no one shall come there to solicit trade simply because it may be convenient for travelers, and so to say that none, except those whom it permits, shall solicit in the business of hacking or expressing. When notice of such prohibition has been given, the license which otherwise might be implied, is at an end it is the duty of persons engaged in any such business to heed and notice and to retire from the premises. While this is so, the company cannot deprive a passenger of the ordinary rights and privileges of a traveler, among which is the privilege of being transported from the terminus in a reasonably convenient and usual way. The company cannot compel a passenger to take one of certain carriages or none at all, nor impose unreasonable restrictions which will amount to that. * * *

The driver is not engaged in his vocation of soliciting patronage but is waiting to take one with whom a contract has already been made."

The court held, that this presented a good defense under the TRIPP case, Harris case and the English cases; the defendant occupying the same position as the driver of a private carriage who went there to meet a passenger by appointment.

To the same effect is *Godbout* v. *St. Paul Union Depot Co.*, 79 Minn., 188, 190-200, decided in 1900. In that case, the company was sued by a cabman for being excluded from the station on account of an exclusive contract with a cab company. All the leading cases *pro* and *con* are cited and discussed, and the distinction is made by the court between a discrimination within the station and outside; and it sustains the exclusive privilege on the ground that no hackman has a statutory or common law right to enter the station to solicit business, but only for delivering or receiving passengers upon order or contract. That the outside facilities must be equal, but the inside need not be any more so as to cabmen than as to news or refreshment stands.

In holding that Godbout had no cause for action, the court said:

"It is well settled that a common carrier may grant the exclusive privilege of soliciting the patronage of passengers on its boats and trains, also to sell books and refreshments on its trains and depots. * * *

We have met with no case to the contrary. No case has been brought to our attention where an attempt has been made to apply the rule within a depot, where the general business is transacted between a common carrier and its patrons. No complaint is made in the case before us that any discrimination was practiced against appellant outside the depot. He seeks, however, to extend the doctrine of no discrimination in soliciting patronage to the very heart of the building,

where thousands of people are passing through daily, pursuant to their business relations as passengers with defendant. Whether arising upon considerations of public policy, or having its foundation in a statute, the principle which applies to prevent discrimination is that the rights of the public must be subserved."

The doctrine established in the "Express Cases," was reaffirmed by this court in *Chicago, St. Louis & New Orleans R. R. Co.* v. *Pullman Southern Car Co.*, 139 U. S., 101, decided in 1891. The court said:

"It is assigned for error that the court refused to instruct the jury that the agreement sued on was void as against public policy because of the exclusive rights given to the plaintiff for the term of fifteen years, in respect to drawing room and sleeping cars furnished by it to the defendant, supplemented by the stipulation that the defendant would not contract with any other party to run the said class of cars on and over said lines of road during said period of fifteen years; and because the law will not permit individuals to oblige themselves by a contract when the thing to be done or omitted, is injurious to the public (citing authorities). Such a contract, it is argued, is in general restraint of trade. The authorities cited in support of this contention have no application to such a contract as the one before us. The defendant was under a duty arising from the public nature of its employment to furnish for the use of passengers on its lines, such accommodations as were reasonably required by the existing conditions of passenger traffic. Its duty as a carrier of passengers was to make suitable provisions for their comfort and safety. Instead of furnishing its own drawing room and sleeping cars, as it might have done, they employed the plaintiff whose special business was to provide cars of that character to supply as many as were necessary to meet the requirements of travel. It thus used the instrumentality of another corporation in order that it might properly discharge its duty to the public. So long as the defendant's lines were supplied with the requisite number of drawing room and

sleeping cars, it was a matter of indifference to the public who owned them. (Express Cases, 117 U. S., 1.)"

New York Central & Hudson River R. R. Co. v. *Flynn*, 74 Hun., 124, was an appeal by Flynn and others from an order of the court below, to continue *pendente lite* a temporary injunction restraining the defendants from entering or being upon the lands of the said plaintiff, contiguous to and on the west side of its railroad depot in the City of Albany, in any other manner, or for any other purpose than that in which and for which the same might lawfully be used by the public in going to and departing from the trains of the plaintiff, and further restraining the defendants from interfering with or blocking up the passageways or entrances to the said depot, depot grounds or buildings, and from in any manner interfering with, and preventing the free and uninterrupted right of ingress and egress of plaintiffs, their officers, agents and servants, to and from the said premises.

The action was brought to obtain a perpetual injunction, and the pleadings and proofs showed that the railroad company owns, keeps and maintains land to the width of about forty feet contiguous to the west side of its Albany depot, extending from Maiden Lane to Steuben street, as a private street and way of approach for its passengers on foot or in vehicles going to and from its said depot and railroad trains; and for no other purpose whatsoever; that the plaintiff, for the purpose of preventing annoyance to its passengers from the solicitations of the defendants, who were hack drivers, by going on said premises and soliciting

business of passengers, and also for the purpose of providing safe and orderly service and accommodation for its passengers, entered into a contract with The Consolidated Transfer Company by which it granted for a valuable consideration, the exclusive privilege of going upon its said private way with hacks, carriages and other vehicles, for the purpose of soliciting and obtaining the patronage of such railroad passengers. The transfer company had agreed to conduct its business in a proper and orderly manner, and at a reasonable rate for the service it rendered, and to preserve good order in all respects on the said private way, so that passengers could go to and from the said depot safely and without molestation and annoyance; that the defendants had, at various times and without permission of the plaintiff, and against its remonstrance and prohibition, entered upon the said private way for the purpose of obtaining employment by passengers, and against the remonstrance and orders of plaintiff, had remained upon the said private way soliciting employment by passengers, and by their unlawful acts and presence obstructed the said private way, and interfered with the conduct of the business of the plaintiff, and refused to cease such unlawful acts, but continued therein, to the plaintiff's injury.

The defense interposed was, that the defendants were competitors and rivals of the Consolidated Transfer Company in the business of carrying passengers and their baggage for hire to and from the railroad depots, hotels, private residences and all other places in the City of Albany, and that as such common carriers they are entitled to the same rights and privi-

leges on the depot grounds in carrying on their said business, as said transfer company had, and any agreement giving such company exclusive rights and privileges is contrary to the statute, and void.

The defendant relied on section 34, chapter 565, Laws of New York, 1890, as amended by chapter 676 of the laws of 1892, which is as follows:

"No preference for the transaction of the business of a common carrier upon its cars, or in its depots, or buildings, or upon its grounds, shall be granted by any railroad corporation to any one or two or more persons, associations or corporations competing in the same business or in the business of transporting property for themselves or others."

In delivering its opinion, the court, by PUTNAM, J., said:

"It is clear that the defendants have no right upon plaintiff's premises unless such a right is conferred by the above quoted statutory provision. They do not claim to go thereon for the purpose of transacting any business with the plaintiff as a common carrier or otherwise. They wish to enter on said premises for the purpose of contracting with passengers leaving plaintiff's depot. * * *

The order from which the appeal is taken was not intended to prevent the defendants from leaving passengers or freight at plaintiff's depot or from taking passengers or freight therefrom. But it prohibits defendants' hacks and employes from remaining on plaintiff's premises; from making such premises a standing ground, for the purpose of soliciting patronage while so engaged in seeking employment on said premises, they having no contractual relations with plaintiff or its passengers."

The court then quotes from the case of *Old Colony R. R. Co.* v. *Tripp*, 147 Mass., 35, *supra*, and says:

"While the question involved is not free from doubt,

and the Massachusetts statute differs somewhat from ours, we are inclined to adopt the views above quoted as applicable to this case and as expressing our views thereon."

At the close of the opinion, the court said:

"Since writing the above, we have been referred to the very able and exhaustive opinion of Justice Green in the case of *New York & Hudson R. R. Co.* v. *Sheeley and others* (not reported), in which the learned justice reaches a conclusion sustaining an action against hackmen similar to this."

In the case last referred to, *New York Central & Hudson River Railroad Co.* v. *Sheeley*, 27 N. Y. Supp., 185, the facts were as follows:

The complaint was brought in the court below, to restrain the defendants from entering upon the plaintiff's station grounds at Niagara Falls. The complaint and affidavits upon which the injunction was granted, and the documents used on the hearing of the motion, established a right to the relief prayed. The plaintiff offered to admit the defendants to the privileges of its station grounds at Niagara Falls, upon their complying with the terms and conditions exacted by the plaintiff. The defendants claimed such conditions were unreasonable, and that they had a right to enter upon said grounds and carry on their business thereon, notwithstanding the plaintiff's protest, by virtue of the provisions of section 34 of the railroad law, above quoted in the Flynn case.

The Supreme Court, by Mr. Justice GREEN, said:

"The injunction was properly granted. * * * Where the injury resulting or likely to result is irreparable in its nature, either in respect of being compensated pecuniarily, or because from the circum-

stances no estimate of the damages can be made with reasonably accuracy, the inadequacy of legal remedies is sufficiently apparent."

The court then examines at considerable length, section 34 of the railroad law, above quoted, and reaches the same conclusion that the Supreme Court of the Third Department did in the Flynn case, *supra*, that hackmen are not within the terms of said law, and the court adds, page 193:

"Whether the court adopts the interpretation of the words, 'common carriers,' as referring to the railroad company itself or as applicable only to other carriers of freight and merchandise over railroad lines, it will not aid the defendants in this case. However that may be, the court is firmly of the opinion that the term has no application, in this statute, to persons engaged in the business of carrying passengers in cabs, hacks and omnibuses. Hackmen, as 'common carriers' of persons, have no right to transact their 'business' upon railroad cars. Their business is to carry persons from place to place over and along the public highway. The primary meaning of the term 'common carrier' is one who undertakes for hire to transport the goods of such as choose to employ him from place to place * * * He is answerable for all losses which do not fall within the excepted cases of the act of God and public enemies. 'But the proprietors of stage coaches, whose employment is solely to carry passengers (such as hackney coachmen), are not deemed common carriers (but rather passenger carriers), although, as to the passage or luggage of passengers, they may incur the same liability as a common carrier.' They are not responsible for mere accidents happening to the persons of passengers without any default whatever on their part. On the other hand, they are responsible for the exercise of the highest degree of care and diligence, or, as it has been expressed, for all diligence in the carriage of passengers as far as human fore-

sight and care will go. (Story R. R., Secs. 498, 499.) The opinion of the court in *Wyckoff* v. *Ferry Co.*, 52 N. Y., 34, is particularly applicable to hackmen: 'A ferryman is not a common carrier of property retained by a passenger in his own custody and under his own control, and liable, as such, for all losses and injuries except those caused by the act of God or the public enemies.' He does not assume all the responsibility of a common carrier."

The court at some length reviews the Tripp case, and approves the doctrine enunciated therein, and then distinguishes the cases of *Cravens* v. *Rodgers*, 101 Mo., 247; *Bus Co.* v. *Sootsma*, 84 Mich., 194; *Railroad Co.* v. *Langlois*, 9 Mont., 419,—all cases relied on by petitioners in the case at bar, and hereinafter analyzed by us.

The court holds that said Missouri, Michigan and Montana cases are distinguishable from the case before the court, and refuses to recognize them as sound law, partly because their facts are different from the Sheeley case, partly because they are based upon statutory provisions differing from the New York statute, and partly, as in the Montana case, because an attempt was made, in the interest of the person holding the exclusive contract, to exclude all hackmen from delivering baggage or passengers to the station, but principally because those decisions are not sustained by the common law.

The value of the Sheeley case, therefore, consists not only in its exhaustive examination of many of the authorities which had at that time been decided, but because the court reverts to the common law, and holds on the authority of *Barney* v. *Steamboat Co.*, 67 N. Y., 301; *The D. R. Martin*, 11 Blatch., 234 (2 Federal

Cases, 892); *Railroad Co.* v. *Tripp*, 147 Mass., 35; and *Express Cases*, 117 U. S., 1, that at common law the hackmen had no such right as they there claimed, or petitioners claim here.

Referring to the "Express Cases" last cited, the court said:

"It may very properly be cited as an authority for this proposition that by the common law the railroad was under no obligation as a common carrier to afford any accommodations to hackmen for the transaction of their business. A statute in these general terms must be limited and restricted to the duties or obligations which it owes to the public generally in the performance of the functions of a carrier, and does not create any new duties or obligations to particular individuals in respect to the carrying on of their business, nor prevent the granting of any exclusive privilege to one of them."

And in conclusion the court said:

"Upon full consideration of the questions presented and examined, we are led to the conclusion that 'by the common law the railroad is under no obligation, as a common carrier, to afford accommodations to hackmen for the transaction of their business, and that the statute invoked by defendant is limited and restricted to the duties or obligations which it owes to the public generally in the performance of the functions of a carrier, and does not create any new duties or obligations to particular individuals in respect to the carrying on of their business, nor prevent the granting of any exclusive privilege to one of them.' It follows, therefore, that in our opinion the injunction was properly granted, and should be continued."

The English cases above cited, all preceded the decision by the Massachusetts Supreme Court in the Tripp case, but we will not go into a discussion of them for the reason that petitioners in their brief in

the court below, expressly conceded that the English cases support the respondent herein. Mr. Lewis, the able author of Lewis on Eminent Domain, in a note to the case of *McConnell* v. *Pedigo*, 92 Ky., 465 (5 American Railroad & Corporation Cases, 720), also says:

"The English cases tend to support the Massachusetts case referred to." (Meaning the Tripp case.)

We, therefore, find that the English and American courts, both federal and state, uniformly support respondent's contention in the case at bar, and not until 1890 was there any departure from this current of authority, when the case of *Montana Ry. Co.* v. *Langlois*, 9 Mont., 419, was decided by the Supreme Court of Montana.

By reference to that case it will be seen that an exclusive right was given to Lovell Brothers to drive to, and stand their hacks, carriages and omnibuses along the edge of the railroad platform for the purpose of delivering baggage and passengers and soliciting like custom from arriving travelers, thereby excluding all other hackmen from the right to deliver passengers or baggage at said platform. This could not be sustained, and it is conceded and admitted by respondent herein, that any hackman or cabman has a right to drive up to a railroad station, deliver his passengers and baggage and receive such as he has an order for without any interference on the part of the railroad company, except such as is necessary to maintain order, conserve the safety and convenience of the passengers, and the reasonable rights of others in delivering passengers and baggage at the street frontage.

The *Tripp* case in Massachusetts, differs essentially from the Montana case, and the Montana Supreme Court so recognizes. The latter court says, referring to the Tripp case:

"The facts involved in that case are quite similar to the case at bar, although it appears from the statement of facts in the opinion that while an exclusive grant was made by the railway company to Porter & Son to go upon the depot premises to solicit passengers and baggage for transportation and all other hackmen were forbidden to go there for that purpose, *still all hackmen were allowed equal privileges to go to the station to deliver passengers and baggage and to receive such as they had a previous order for.*"

Now, in the Montana case there was a partially illegal contract, and of course the whole contract fell because the illegal part could not be separated from the legal. In the Tripp case there was no illlegal part. The exclusive privilege was given simply for soliciting passengers and baggage, not for delivering at the station such passengers and baggage, and there is an intimation in the opinion in the Montana court, that if the Montana case had been similar to the Massachusetts case, they might have held likewise. The court says:

"But has the railroad company, in dealing with its passengers and exercising a control over their movements and the conditions which surround them for the time being, a right to place one hackman in their midst, with exclusive control over the common conveniences and facilities of the place at which the passenger may land, or from which he may depart, so that, if the passenger obtain the use of these conveniences and facilities, he must purchase the privilege, he must also purchase the privilege from such hackmen or suffer discrimination?"

The illegal restriction of preventing all hackmen from delivering passengers and baggage at the station, bound up with the legal requirement of exclusive privileges for soliciting custom of incoming passengers, is apparently what moved the court in the Montana case to dissent from the opinion in the Massachusetts case, for the Montana court adds:

"The Tripp case is the only American case brought to our attention which passes upon the points directly involved herein."

In the case of *Hedding* v. *Gallagher*, 72 N. H., 377, *supra*, the Supreme Court, in distinguishing the Montana case, says:

"The discrimination authorized by the contract in that case was a discrimination affecting the comfort and convenience of passengers, and it was held to be a violation of the plaintiffs' public duty to treat all passengers with substantial uniformity. *McConnell* v. *Pedigo*, 92 Ky., 465, is explainable upon the same ground."

At that time, the case of *Fluker* v. *Georgia Railway Company*, 81 Geo., 461, and *Griswold* v. *Webb*, 16 R. I., 49, cited *supra*, had been decided, but were not brought to the attention of the Montana court; for in the Georgia case it was expressly held that a railroad corporation may exclude whom it pleases when they come to transact their own private business with passengers or other third persons and admit whom it pleases when they come to transact such business, and this applies to selling lunches to, or soliciting orders from, passengers for the sale of lunches upon the railroad company's premises.

In the Rhode Island case, it had been previously

held that a steamboat company (of course a common carrier similar to a railroad company) had full control of its private premises, and:

"Has the right to say that no one shall come there to solicit trade, simply because it may be convenient for travelers, and so to say that none, except those whom it permits, shall solicit in the business of hacking or expressing. When notice of such prohibition has been given, the license which otherwise might be implied is at an end, and it is the duty of persons engaged in any such business to heed the notice and to retire from the premises."

In the case of *Kalamazoo Hack Company* v. *Sootsma*, 84 Mich., 104, also relied on by petitioners, a portion of the station grounds at Kalamazoo had been leased to the hack company, with an exclusive privilege for the delivery of outgoing passengers and baggage and for solicitation of custom of incoming passengers and baggage. The same criticism, therefore, applies to the relevancy of that decision that applies to the Montana case. An illegal contract was bound up with a legal contract, and the whole contract necessarily fell, and in that case the judge delivering the opinion for the Michigan court, said, referring to the doctrine of the Tripp case in Massachusetts:

"I can find no other case holding to this doctrine."

In *Cravens* v. *Rogers*, 101 Mo., 247, also relied on by petitioners, was a dispute between two sets of hackmen, the complainant seeking to enjoin the defendants from occupying exclusively the railroad platform under an agreement for such exclusive use with the railway company, and the identical question which we have called the court's attention to in the Montana and Michigan cases occurred in this case.

The bill charged that the defendants, without the consent and against the will and wish of the plaintiffs, had driven upon and used and occupied said platform, and thereby prevented complainant from reaching the main platform at said depot except at a place where the grade was heavy and the mud often deep; there, again, it appears that the complainants were excluded from the right to deliver baggage and persons at that station. Of course, such an exclusive agreement as that would be illegal, since the illegal part could not be separated from the legal part, and the whole would fall. The Supreme Court of Missouri cites no cases whatever.

In *McConnell* v. *Pedigo*, 92 Ky., 465, also relied on by petitioners, the court says that the railway company agreed to give McConnell the exclusive privilege of standing hacks at the platform of its depot in Glasgow, in consideration that McConnell would carry the mails from the depot to the postoffice in that town. This privilege was conferred to the exclusion of all other public hacks or vehicles from the hotels of the town.

The court says:

"There is no testimony whatever showing that the hacks of the defendants or their drivers interfered in any way with the employes of the railroad in the discharge of their business; and the sole question arises, has the company the right to grant such exclusive privilege? The hacks of the defendants do not stand at or near the depot where the mails are received by the plaintiff. Their drivers do not annoy the passengers by soliciting their custom, or taking charge of their baggage, but stand with their hacks ready to receive passengers who desire to be carried

to the hotels or other places in the city, and the only ground for the injunction is that it lessens the profits of the plaintiff under his agreement with the railroad company."

So it appears that the exclusion in that case was entirely from the right to deliver persons and baggage at said station, and from the right to stand their hacks at convenient points accessible to passengers arriving. No such right is contended for here. If the petitioners would stand with their hacks at the hack stand located by the City of Chicago, there would be no controversy. It is the claim of the hackmen to come into the station and ply their vocations, and hackmen, runners and expressmen gathering in front of the station doors and obstructing the passageways and attempting to do business there, which is the injury complained of by the respondent in the case at bar.

The case of *Lindsey* v. *Anniston*, 104 Ala., 267, also relied on by petitioners, arose upon an ordinance of the City of Anniston which prevented any hackman from entering the railroad depot for the purpose of soliciting passengers for his hacks. Lindsey was convicted of violating this ordinance, and the court held that the ordinance was a valid exercise of the charter power, and that the fact that Lindsey's employer had an exclusive contract with the railway company for carrying such baggage and passengers was not sufficient. The court relies on the Michigan and Montana cases to sustain its decision.

No such ordinance is in question in this case, and none could be passed by the City of Chicago under its existing powers, because it would thereby arbitrarily interfere with the rights of the traveling public.

In the case of *State* v. *Reid*, 76 Miss., 211, also relied on by petitioner, the defendant Reid was convicted of a trespass upon the railway company's property in Vicksburg by reason of soliciting custom therein against the wishes of the railway company, it having given the exclusive privilege to one Peine. In that case the court held squarely that the contract in question was void. For its decision, the court relies upon the decisions in the Montana, Missouri and Kentucky cases above cited, and the dissenting opinion in the Tripp case from Massachusetts.

But the facts in the above case do not show any interference with the rights of incoming passengers at the station, nor that the actions of the hackmen in anywise interfered with the duty of the railway company to its incoming and outgoing passengers. In fact, the evidence did not show any gathering of hackmen in front of the narrow and restricted entrance to the railway station in a large city in such numbers as to interfere with the rightful and lawful use that the railway company would have of its own premises and such portion as abutted upon the highway.

Referring to, and dissenting from the *Tripp* case, the Mississippi court says:

"The majority of the judges in that case held that the railroad might grant to one an exclusive right to solicit the patronage of incoming passengers, *but this is the only American case making that distinct holding*, and that opinion was delivered by four judges, the other three members of the court vigorously dissenting and with better show of reasoning, in our judgment."

In the case of *Indianapolis Railway* v. *Dohn*, 153

Ind., 10, also relied on by petitioners, the railway company made an exclusive contract with the transfer company for the right to stand hacks on a certain area and solicit business of incoming passengers. Suit was brought to enjoin appellee from entering upon the station grounds to solicit customers for his hacks. Appellee drove upon the restricted station premises and solicited business from arriving passengers, and refused to vacate when he was told so to do.. The court says:

"From this finding it does not appear that appellee's conduct was boisterous; or that he was interfering with appellant in the discharge of its duties to the passengers of the proprietary or associated railway companies, or that he was annoying or interferring with the passengers, or that he was refusing to comply with any rule or regulation of appellant that applied to all hackmen."

Therefore it appears that had such facts been shown as exist in the case at bar, the Indiana court's decision would have been the other way. It is very clear from the opinion just quoted, that the court would have held that hackmen could not enter the station or congregate in large numbers upon the station premises or abutting the station premises in such manner as to interfere with the rights of passengers or the duty of the complainant towards said passengers, if such facts had appeared in the case. In its opinion the court relies upon the cases cited by the petitioners in this case, and does not refer to the line of cases, of which *Jencks* v. *Coleman*, 2 Sumner, 221, the English cases, and the Tripp case in Massachusetts are leading authorities.

The case of *Pennsylvania Company* v. *Chicago*, 181

Ill., 289, also relied on by petitioners, did not involve the question at bar at all, but it involved the question of the power of the city government to create a hack stand upon a public street abutting the railway company's property, and the Supreme Court departed from that question to say that the contract between Eighme and the railway company was void, and relied upon the Montana, Michigan and Kentucky cases and the *dissenting opinion* in the Massachusetts case for its authority, apparently in ignorance in the citation of the opinion and in the language quoted, that they were not relying upon the opinion of the court in the Tripp case, 147 Mass., 43.

This opinion of the Illinois Supreme Court was vigorously assailed by CARTWRIGHT, C. J., in a dissenting opinion, in which he said:

"The authorities cited and quoted from in the opinion to the effect that a railroad company cannot give one hackman exclusive access to its station, and the observations touching public duties, public control and the granting of monopolies and special privileges, do not relate to any question in the case, and cannot influence the decision."

The assertion was repeatedly made in the court below by petitioner's counsel, and is riterated here, that the foregoing decision of the Supreme Court of Illinois is decisive of the questions involved in the case at bar, and that if the federal courts should hold to the contrary, a conflict between state and federal interpretation of the laws of Illinois would result.

We have shown that the *facts* before the Supreme Court of Illinois in the case referred to are not similar to those in the case at bar, and that the decision relied

on by petitioners has no relevancy to the questions now before this court. Besides, that decision was not predicated on any law of the State of Illinois regulating the rights and duties of railroad companies.

The Circuit Court of Appeals, in deciding the case at bar (*Donovan* v. *Pennsylvania Co.*, 120 Fed., 218), says (italics are ours):

"Appellee, a Pennsylvania corporation, comes into the federal courts, not on account of its citizenship, for it has none, but by virtue of the irrebuttable presumption that all of its stockholders are citizens of states other than Illinois. *If it were to be conceded that the question now under consideration is one of local law, we would nevertheless feel free to act as we see the right, because we do not find that the Supreme Court of Illinois has decided the question. No statute is referred to that touches the question. No case is cited in which the Supreme Court of Illinois has decided that hackmen have the right, over the objection of a railroad company, to ply their trade on trains and within stations unless all are excluded.* In *Pennsylvania Company* v. *Chicago*, 181 Ill., 289, 54 N. E., 825, 53 L. R. A., 223, the company unsuccessfully prosecuted a suit and an appeal against the city to avoid an ordinance which established a hack stand in the street in front of a portion of the station. Certain hackmen were permitted to intervene and file an answer. They denied the invalidity of the ordinance, and asserted, in effect, that since the company had leased ground owned by it, and situated near its passenger depot, to an owner of hacks for use in his business, it could not contest the right of the city to establish a hack stand in the street adjoining its property. But no claim was set up in the hackmens' answer or adjudicated in the decree appealed from that hackmen, under any circumstances, could compel a railroad company to permit them to carry on their business by soliciting patronage on the company's premises."

The repeated insistence by petitioner's counsel that hackmen and expressman are common carriers of passengers and baggage, and as such their rights and duties are the same as all other common carriers of passengers and baggage, is effectually disposed of by the court in *Hedding* v. *Gallagher*, 72 N. H. Sup. Ct., *supra*.

In passing upon the same contention, which was advanced by appellees in that case, the court says:

"Nor do the defendants, if regarded as common carriers, owe a duty to the incoming passengers to meet them in the station and solicit their patronage. Hence, it follows that when they do enter the station and solicit business they are acting in a private capacity, and not in the performance of any public duty, either to the passengers, the railroad, or anyone else. If they are common carriers when driving about the streets, they are not common carriers performing a public duty when they enter the station to solicit the carriage of baggage. Probably solicitation is no part of a common carrier's business anywhere; nor is it a part of the public duty of a local job teamster to be at any particular place to receive parcels for carriage. Hence, no duty, in the absence of contracts, rests upon the defendants to be present at the station on the arrival of trains. As public policy does not require their presence there, and as the obligation of the railroad to the public can be performed as well, and perhaps better, when they are not present, no substantial reason remains for the claim that the railroad is bound to furnish job teamsters facilities for carrying on their business in its stations. To say that when the ordinary job teamster happens to go into a railroad station and to ask a passenger for the privilege of carrying his trunk to the hotel, he is in the performance of an important public function as a common carrier of baggage, or that the railroad is under an imperative obligation to the public, the passenger, or the teamster

to permit such solicitation in its station, is the assertion of a principle founded upon the radically erroneous assumption that the property of a railroad may be used by others without compensation, and against the protest of the corporation, for the prosecution of their private business."

See, also, *New York Central & Hudson River Railroad Co.* v. *Sheeley*, 27 N. Y. Supp., 193, *supra*.

We have in this review and criticism considered all the case cited by petitioners on the question in controversy, and, as shown, there are just two that are directly in point, and in both of these, as appears from the quotations, the hackmen were not engaged in interfering with the exit or entrance to the passenger stations, or with the rights of the passengers coming to or departing from said stations, nor did they conduct themselves boisterously or congregate in large numbers, or interfere with the duties of the railway company to its passengers.

To the contrary, we may be permitted to call special attention to the six most recent cases upon the point in controversy at bar, all in favor of respondent's contention herein.

First, is that of *Godbout* v. *St. Paul Union Depot*, 79 Minn., 188, above cited, where the rights of a railway company to make an exclusive contract with hackmen for soliciting custom within its station was sustained as being in the interest of the passengers and within the rights of the railway company, and as a part of its duty to protect its incoming and outgoing passengers. In that case the court reviewed all the authorities cited by petitioners in this case.

There a hackman, Godbout, had been ejected from

the Union Passenger Station for attempting to solicit the trade of incoming passengers. He brought an action for damages, and on appeal the court said:

"No complaint is made in the case before us that any discrimination was practiced against appellant outside the depot. He seeks, however, to extend the doctrine of no discrimination in soliciting patronage to the very heart of the building, *where thousands of people are passing through daily*, pursuant to their business relations as passengers with defendant."

And, after reasoning that within the station conditions are different from without the station, the court says:

"We therefore conclude that neither a hackman nor a common carrier has either a statutory or common law right to enter the Union Depot to solicit business; that both may enter the depot for the purpose of delivering or receiving passengers upon order or contract; that all carriers, private and public, have a common right, without discrimination, to solicit patronage at such points as may be properly designated beyond the depot; that within such building defendant has control of its property, and business, by virtue of its right of ownership, subject only to the rights of the public transacting business with it; and, as an incident to such obligations to the public and right of ownership, defendant may grant special privileges for the transfer of passengers and baggage."

In *N. Y. Cent. R. R. Co.* v. *Warren*, 64 N. Y. Supp., 781 (May term, 1900), the Supreme Court of New York held that a contract by which for a valuable consideration the railway company gives to certain hackmen the exclusive privilege of carrying away from its station grounds incoming passengers, is valid, and the court will enjoin rival hackmen from soliciting

against its protests at the station grounds, employment from incoming passengers.

In *Boston & Albany R. R. Co.* v. *Brown*, 177 Mass., 65 (October, 1900), the Supreme Court of Massachusetts *unanimously reaffirmed* the doctrine of the case of *Old Colony R. R. Co.* v. *Tripp*, 147 Mass., 35, and held, that a hackman who persisted in entering a railway station for the purpose of soliciting custom of incoming passengers, was guilty of trespass, and was properly convicted, and it was no defense to such prosecution that an exclusive contract had been granted to another party for the purpose of soliciting the trade of incoming passengers inside said station.

In *Boston & Maine R. R. Co.* v. *Sullivan*, 177 Mass., 230 (December, 1900), the court held, that where a hackman who had been permitted by a railway company to enter its station grounds to solicit passengers and baggage, continued to trespass on said grounds after notice that the company had sold the exclusive privilege to another, and such trespassing hackman did not deny the company's title to the property or claim any right of way over the same, the company was entitled to an injunction restraining the continuance of such trespasses, since resort to actions might occasion a multiplicity of suits, every trespass constituting a new cause of action. That arose out of an exclusive contract for the solicitation of passengers at the station at Lawrence, Massachusetts. The injunction prayed for by the railway company was granted. The court said:

"The facts show that the defendants have been guilty of trespasses, which they propose to continue.

The ownership of the plaintiff is admitted, and no question of title is involved. Nor is any claim to a right of way over the plaintiff's land set up in the answer of the defendants. It seems to us clear that the bill in this case may be maintained. If the plaintiff were to sue at law, the amount recoverable could not be large, in comparison with the amount expended in litigation, and every trespass would give a new right of action. Hence there would arise a great multiplicity of suits. At some time the plaintiff would be entitled to the protection of a court of equity, and there is no reason why, on the facts of this case, the remedy by injunction should not be granted at once."

In *N. Y., etc., R. Co.* v. *Bork,* 23 R. I., 218 (49 Atl. Rep., 965), decided July 22, 1901, an action of trespass was brought by the plaintiff against Bork for trespassing upon the premises occupied by plaintiff as a railroad station. The judgment went for the plaintiff, and the court in an able opinion reviewed practically all the authorities on the subject on the point in question, and reaffirmed its decision in the case of *Griswold* v. *Webb,* 16 R. I., 649, holding that the railroad company had the right to say that no one shall come upon its premises to solicit trade, and has the right to say that none except those whom it permits shall solicit in the business of hacking or expressing on its premises.

These six cases but follow the law as laid down in the Federal cases cited from Sumner and Blatchford, the English cases, all unanimous, and the earlier American cases from Massachusetts, Georgia, Rhode Island, Pennsylvania, New York, Connecticut, Ohio, and the early Indiana case (148 Ind., 64) hereinbefore cited.

The most recent and authoritative decision of any State Supreme Court which involves the identical questions in controversy herein, is that of *Hedding* v. *Gallagher*, 72 N. H., 377 (64 L. R. A., 811), (57 Atl. Rep., 225).

In that case the Boston & Maine Railroad made a contract with Hedding giving him the exclusive privilege of entering its station grounds and building in the City of Manchester, for the prosecution of his business as a carrier of passengers, baggage, etc. The appellees, who were also job teamsters engaged in transporting baggage, etc., in the said city, persisted, against the protests of Hedding and the railroad company, in entering the grounds and station building, and there soliciting patronage of incoming passengers. And appellants filed a bill to enjoin appellees.

The facts and the law involved in that case are parallel with those of the case at bar, and the reasoning of the learned court is so lucid and convincing, that we may be pardoned for making copious excerpts from the opinion, and appropriating them as a part of our argument.

In delivering their opinion, the court said:

"It (the railroad) is obliged to provide reasonable accommodations at its station in Manchester for the use of the traveling public who are brought together at that point. But it owes this public duty, not to all persons indiscriminately, but to those only who stand in some contractual relation with it as passengers. A trespasser in its station could not complain that it did not furnish suitable and reasonable means for the accommodation of its patrons, for to him it does not owe the duty of furnishing facilities for transportation. *Harris* v. *Stevens*, 31 Vt., 79, 73 Am. Dec., 337.

If it is conceded that it is the duty of the railroad to furnish arriving passengers with reasonable means and opportunities for removing their baggage from the station, and that such means and opportunities include the presence at the station of soliciting agents for the carriage of baggage, it would not follow that it owed the defendants the duty of affording them adequate facilities for the solicitation of business from the passengers. It cannot be assumed that the passengers' convenience under their contract of carriage over the railroad requires the presence of the defendants as independent carriers at the station on the arrival of trains. The railroad may furnish or permit adequate means for the convenience of its passengers in this respect, without the voluntary assistance of the defendants. If it is its duty to have men present on the arrival of its trains, ready, when requested, to remove the baggage of passengers from its premises, no substantial reason is suggested why it may not perform that duty through such agents as it sees fit to employ, or why it should be obliged to submit to the irresponsible interference of unemployed third parties in doing the work required of it.

Nor is it apparent how the railroad's duty to its passengers in this respect gives rise to a right in all local job teamsters to perform that duty, or any part of it. The right of its passengers to have men present to solicit the carriage of baggage, or to receive such solicitation from them upon the arrival of trains, if it exists at all, does not require the presence of independent local truckmen. Whether the soliciting agents are independent local truckmen, or whether they are men specially permitted by the railroad to perform that service in its station, is an unimportant detail in the reasonable performance of the public duty to passengers of providing adequate facilities for the transfer of baggage. 'So long as the public are served to their reasonable satisfaction, it is a matter of no importance who serves them.' Express Cases, 117 U. S., 1, 24, 29 L. Ed., 791, 801, 6 Sup. Ct. Rep., 542, 628; *Chicago, St. L. & N. O. R. Co.* v. *Pull-*

man Southern Car Co., 139 U. S., 79, 89, 35 L. Ed., 97, 101, 11 Sup. Ct. Rep., 490. Hence the railroad's duty to its passengers does not include a duty or obligation to permit all local carriers of baggage to solicit business in its station. The right claimed by the defendants to enter and remain upon the station grounds cannot be established by that method of reasoning.

Nor do the defendants, if regarded as common carriers, owe a duty to the incoming passengers to meet them in the station and solicit their patronage. Hence it follows that when they do enter the station and solicit business they are acting in a private capacity, and not in the performance of any public duty, either to the passengers, the railroad, or any one else. If they are common carriers when driving about the streets, they are not common carriers performing a public duty when they enter the station to solicit the carriage of baggage. Probably solicitation is no part of a common carrier's business anywhere; nor is it a part of the public duty of a local job teamster to be at any particular place to receive parcels for carriage. Hence no duty, in the absence of contract, rests upon the defendants to be present at the station on the arrival of trains. As public policy does not require their presence there, and as the obligation of the railroad to the public can be performed as well, and perhaps better, when they are not present, no substantial reason remains for the claim that the railroad is bound to furnish job teamsters facilities for carrying on their business in its stations. To say that when the ordinary job teamster happens to go into a railroad station and to ask a passenger for the privilege of carrying his trunk to the hotel, he is in the performance of an important public function as a common carrier of baggage, or that the railroad is under an imperative obligation to the public, the passenger, or the teamster to permit such solicitation in its station, is the assertion of a principle founded upon the radically erroneous assumption that the property of a railroad may be used by others without compensation,

and against the protest of the corporation, for the prosecution of their private business. * * *

Having no express authority for the use they make of the railroad's station, the defendants had no right to such use before the contract with Hedding, in the absence of a revocable license, unless it can be based upon or derived from the right of passengers to reasonable accommodations for the removal of their baggage from the station. But, if that duty is fully and satisfactorily performed by the railroad—if its patrons receive reasonable, prompt and adequate service—the presence of the defendants at the point where they alight from the cars is unnecessary, and may be objectionable. If it is the public duty of the railroad to afford adequate facilities for the transfer and removal of baggage, and if that duty is performed to the satisfaction of its patrons, it is difficult to understand how local truckmen acquired the right, or how a duty rests upon them, to be present for the performance of that service, except so far as they have been permitted by the railroad to enter its premises; that is, except so far as the right exists under a revocable license from the railroad.

When it is said that the station has been devoted to the business of the transfer of baggage, so that all truckmen have an absolute right to prosecute their business at that point, the error in the argument is that it disregards the duty of the railroad to the traveling public, to whose convenience it has devoted its station, and assumes that its license to truckmen to assemble there has become irrevocable.

* * * * *

But it is said that the defendants' right of entry and occupation arose when the railroad attempted to grant the exclusive privilege to Hedding to solicit business in its station. It is admitted that for many purposes the railroad has the same rights of ownership in its station building that private persons have in their real estate; but it is asserted that 'a common carrier, who owes the duty to furnish to passengers for Manchester reasonable and equal facilities at the

station there, is bound to accord equal facilities to all who come to that station for the purpose of carrying passengers or baggage beyond its line of road. The rights of the traveling public being involved, all that the road can do is to make reasonable regulations as to how these rights shall be furthered by baggage-carriers. It cannot discriminate between them.' *Hedding* v. *Gallagher*, 69 N. H., 650, 661, 76 Am. St. Rep., 204, 45 Atl., 96. It is not apparent how the duty of the railroad to furnish equal and reasonable facilities to its passengers for the removal of baggage originates a duty on its part to local truckmen to permit them indiscriminately to occupy its station for the solicitation of the carriage of baggage. The equality of service which the law requires is an equality between persons having contractual relations with the railroad relating to transportation, and if it furnishes the traveling public that equality in a reasonable and satisfactory manner, it is difficult to understand upon what principle its employment of one set of men to serve its patrons equally and properly gives rise to a right in another set of men to occupy its station for the performance of the same service. If the defendants had no absolute right to occupy the station before the discriminating contract was made, if the traveling public had no right to demand that they should be allowed that privilege, and if, as is admitted by the demurrer, Hedding, under the contract, furnishes adequate and reasonable facilities to the traveling public for the removal of their baggage, it would seem that the defendants' claim could only be justified by express legislation, which does not exist. The discriminating character of the contract deprived them of no essential right they possessed before, and it did not deprive the traveling public of that reasonable and equal service to which they are entitled.

Whether the contract is illegal, upon grounds of public policy, depends upon the question whether the discrimination is unreasonable as against the traveling public. * * *

The right of patrons of the road to employ servants

to go upon the grounds of the railroad, either to carry their baggage to, or remove it from, the station, can not be denied, in view of the public duty of the railroad to its passengers; but it is fallacious to argue from this admitted legal principle that unemployed teamsters have an equal right to enter the station for the purpose of seeking employment. The implied right of a passenger under his contract of carriage to employ a servant or agent to carry his trunk to the baggage room, and to meet him at the station to receive his baggage on his return, is not, it would seem, analogous to the supposed right of an unemployed individual to enter the station for the purpose of seeking employment as a baggage expressman. The latter cannot justify his entry under any contractual relation with the railroad entered into by himself, or under a contract of agency of employment by any passenger arriving at the station. He is not employed by any one to be at the station. He has not agreed to be there. He is there, not in the performance of any contractual duty, but in the pursuit of an opportunity to make a contract. Among the reasonable conveniences the railroad is bound to accord to its passengers is the removal of their baggage when delivered to them within the station by such agents as they may employ. *Tobin* v. *Portland, S. & P. R. Co.*, 59 Me., 183, 8 Am. Rep., 415. But this evidently does not include the duty to permit strangers to solicit in its station contracts of employment from its passengers. The duty of the corporation to its passengers in this respect does not establish the right claimed in third parties.

In a specific instance, the question is whether A, who is not employed by the railroad or by any of its patrons, and who is not seeking to use the means furnished by the railroad for the transportation of himself or his property, has the same right to occupy the station grounds that B has, who is especially permitted by the railroad to be there for the accommodation of the passengers, and fully meets all their wants in respect to their baggage. If the public are

fully accommodated, what consideration of public policy or what principle of law gives rise to a right in A to occupy the property of the railroad? B is not there in the capacity of a patron of the road, and A does not claim to justify his presence as a patron of the road. As it is clear that the road does not owe the duty of furnishing equal facilities for transportation to people who are not seeking to avail themselves of such facilities, it follows that neither A nor B, when seeking employment—not transportation—can base his right upon the principle of equality. To recognize such a right would lead to most absurd results. B is there as a licensee of the road for the benefit of its patrons, and incidentally for the benefit of the road itself and his own advantage, while A is present, not by virtue of any license or authority from the road or its patrons, but in a purely private capacity, and for his own benefit alone.

If it is assumed that the defendants are in a legal sense common carriers of parcels in Manchester, as they are alleged to be in the bill, and that consequently they are under certain obligations to the public, the conclusion does not follow that they have an independent right, as carriers, to appropriate the property of the railroad for the purpose of serving the traveling public, who already receive ample service from other agencies. They cannot justify their entry upon the railroad's grounds by proving that it occasions no inconvenience to the passengers or the employes of the railroad, for the corporation does not hold its property subject to the use of other and connecting common carriers, when the public are fully served without such use. Whether, under such circumstances, it would be reasonable, if they had a right to be present, and whether that burden ought to be imposed upon the railroad, are questions of the legislative control of corporations, upon which the law-making body has not seen fit to take action. *Atchison, T. & S. F. R. Co.* v. *Denver & N. O. R. Co.*, 110 U. S., 667, 682, 28 L. Ed., 291, 297, 4 Sup. Ct. Rep., 185. The railroad is

under no statutory or common law obligation, as the owner of its station, to gratuitously permit other unemployed common carriers to use it as a place for soliciting business, merely because such use might seem to others to be reasonable. The doctrine of reasonableness in the owner's use of his property (*Franklin* v. *Durgee*, 71 N. H., 186, 58 L. R. A., 112, 51 Atl., 911; *Horan* v. *Byrnes* (N. H.), 62 L. R. A., 602, 54 Atl., 945) has not gone to the extent of holding that he must suffer such occupation of his premises by others as is not inconvenient to him and does not interfere with his practical enjoyment thereof.

Nor is the suggestion sound, that, because a truckman who is specially employed by a passenger to transport his trunk has a right to enter the station for that purpose, all common carriers seeking the carriage of trunks have a similar right of entry, derived from the public whom they are desirous of serving. In the former case the truckman represents the passenger, and is his servant or agent when he occupies the station, while in the latter case the carriers of trunks do not represent, and are not the servants or agents of, the traveling public before their employment, but are merely private individuals from whom a traveler may require transportation service; and, until such service is required, they have no duties to perform to the public, and are invested with no rights as against the railroad. * * *

From this examination of the authorities it is apparent that there is little substantial conflict of judicial opinions upon the exact question presented by the case at bar. As said by the court in the recent case last above cited (*Pennsylvania Company* v. *Donovan*, 120 Fed., 215), upon facts similar to those herein considered, it is 'clearly established, by the great weight of authority in England, and the United States, that complainant is entitled to the relief prayed for.' That it is possible to discover general statements in some of the cases seemingly at variance with the views herein expressed is true; but the conflict thus suggested disappears in most of the cases, when the facts

with reference to which the statements are made are given their proper qualifying effect. It is also to be noted that there is substantial unanimity expressed in the authorities, that the right of a hackman or a job teamster to enter a railroad station in the prosecution of his business, when it exists, is derived from, or is included in, the passenger's right, as against the railroad, to reasonable means of transportation for himself and baggage, and is not a right derived from any duty which the corporation owes him directly as a connecting common carrier. If it is bound to admit him to its station under any circumstances, it is so bound only when he is employed by a passenger, and hence represents the latter as his servant or agent, or when it fails to afford the passenger reasonable facilities of egress from its ground."

In the case at bar, it is admitted that no complaints by passengers of inadequate service have been made (Petitioner's Brief, 33).

"As the corporation does not claim it has the right to exclude job teamsters employed by its passengers to bring baggage to the station for transportation on the cars or to meet them on their arrival, and as it is admitted that, under its contract with Hedding, its passengers will receive better service at the station, with reference to opportunities for the removal of their baggage than could be afforded by the presence there of an unnecessary number of unemployed truckmen engaged in the solicitation of passengers for the carriage of their baggage, its right to exclude the defendants from its station when there on their private business is as broad and unlimited as that of any owner of real estate to expel persons trespassing upon his premises. If its duty to its passengers is fully and satisfactorily discharged by other instrumentalities, there is no reason, arising from considerations of public convenience or necessity, why the additional burden should be imposed upon it, as a property owner, to furnish standing room in its station for other people to render the performance of that duty less efficient

and more disagreeable to the traveling public. If the public is entitled to the best service at railroad terminals, and if it provides such service, it would be a palpable absurdity to say that it must, upon grounds of public policy, permit that service to be crippled and paralyzed by the admission to its stations of large numbers of irresponsible men clamorously seeking the privilege of performing the same service. But if its duty to its passengers does not require the presence, on the arrival of trains, of soliciting agents for the transfer of baggage, it is difficult to explain why it is obliged to permit others to perform that service, or why, if it makes arrangements for such unnecessary convenience of its passengers, by engaging competent men for the work, it must also furnish facilities for others to engage in the same enterprise without compensation. An onerous duty of that character can only be imposed by legislative action."

In that admirable opinion, the New Hampshire Supreme Court effectually disposes of the contention that granting exclusive privileges to one carrier of passengers or baggage is illegal upon grounds of public policy, as being an unjust discrimination. The court also discusses and clearly distinguishes many of the cases relied on by the petitioners' herein.

In *Smith* v. *N. Y., L. E. & W. R. Co.*, 149 Pa. St., 249, *supra*, the Supreme Court of Pennsylvania squarely held that a railway company has a right to order that hackmen shall not stand in front of the entrance to its station, and to remove hackmen who wilfully disobey such order, using as much force as may be necessary. That case was an action of trespass brought by Smith against the railway company for assault and battery. Plaintiff was a hackman and the trespasses were occasioned by his forcible removal from the main entrance to the company's premises. There was judgment for

the railway company, which the Supreme Court sustained. While no question of exclusive contract came in this case, it was clearly decided, in the language we have above quoted, by the Supreme Court on the theory that the railway company owed a duty to the public and its passengers which it was required to perform of keeping free and clear the entrances to and exits from its stations of all objectionable crowds or persons over whom it could not exercise control, in the interests of its duty to the public.

We will not extend this review of the authorities, for we believe we have not only absolutely disposed of the erroneous notion of petitioners' counsel that the latest cases were in their favor, but we show that all the late authoritative decisions are in favor of respondent's contention in the case at bar, that it has the right to exclude from its premises not only all persons attempting to do business upon its premises with passengers against its will, but that it has the right to free and unobstructed entrance to and exit from its station.

As above shown, had the Montana case not involved an attempt to give exclusive rights outside by depriving hackmen of the right to deliver passengers and baggage at the station, that court would not have departed from the current of authority as illustrated by the *Tripp* case in Massachusetts. It is evident from a study of the later cases, that the courts have not been willing to follow the lead of the Montana court in, depriving a railway company of the control of its own premises. The courts must have duly considered the evils of such a course. If one or two hackman can have

the right to enter the station, then four hundred hackmen can have the same right against the railway company's consent; and how would there be room or protection for the passengers?

Underlying every case is the theory that the railway company owes certain duties to its passengers. These duties are to see that they have sufficient accommodation at every station, with proper, convenient and unobstructed entrance to and exit therefrom.

It will not do to say that a railway company must give the right to solicit patronage to all hackmen in or abutting its station, or to none. The decision of every court shows that such a monstrous doctrine as that cannot be sustained, for it means the throwing of the arriving passengers, often infirm, inexperienced and nearly always strangers, upon the tender mercies of the unscrupulous, clamorous and irresponsible hackmen. Nor can the railway companies, in the light of their public duties under the law, stand by without seeking the protection of the law for themselves and their passengers, and securing to them a free and unobstructed passage into and out of the station and the street abutting it.

In our argument in the court below, in citing the *Express Cases,* 117 U. S., 1, we said:

The rule of the *Express Cases,* as applied to the case at bar, is this: There this court held that a railroad company as a common carrier must furnish equal facilities for the conveyance of all *express matter;* but might furnish exclusive privileges for the convenience of a private express *company.* Here the law re-

quires the railroad company to furnish equal and similar facilities in its station for the receipt and discharge of all cab *passengers*. It does not require it to furnish equal and similar facilities in its station for all *cabmen*. Whatever the railroad company is bound to do as a common carrier, it is bound to do for all. Whatever a railroad company is not required to do as a common carrier, it does of its own motion, and its obligation is only as broad as it sees fit to make it.

Counsel for petitioners base their argument entirely on the fact, as claimed, that respondents are *common carriers*. Cabmen, as cabmen, are not common carriers. But whether they are or not is irrelevant. The distinction relied upon does not exist in principle and is not found in the authorities. It is expressly denied by Justices STORY and HUNT, in the Jenckes and Barney cases, by Chief Justice WAITE in the Express Company cases, by Justice GREEN in the Sheeley case, and by Justice WALKER in the Hedding case, all commented on *supra*.

The obligations which the law imposes upon the common carrier as such, it owes to all equally. But permitting a cab solicitor, a baggage solicitor or an express solicitor to ride in its cars or to stand in its station in *pursuit of his calling*, is not a part of the carrier's business as a common carrier. Therefore, he can exclude all or any, or grant the privilege exclusively to one. In admitting one solicitor he does not thereby become a *common carrier of cab solicitors;* because there is no such thing, any more than there is a *common carrier of express companies*.

II.

(A.) RESPONDENT HAS THE LEGAL RIGHT TO FREE AND UNOBSTRUCTED ENTRANCE TO ITS PASSENGER STATION FROM CANAL STREET; SUCH RIGHT IS A PROPERTY RIGHT; AND THE OBSTRUCTION OF SUCH ENTRANCE BY THE PETITIONERS GATHERING THERE IN LARGE NUMBERS TO PLY THEIR VOCATION, IS A PRIVATE NUISANCE.

The sidewalk in front of the main entrance to the station is a part of the public street, and cannot be used by any individual for the conduct of a private business thereon to the exclusion of the abutting owner and the public. Such use is unlawful whether permitted by ordinance or not. The general public have a right of free and uninterrupted passage along such sidewalk; and the portion of the public having business at the station, including the 30,000 daily passengers, have a right of free and unobstructed passage to and from such station over the sidewalk at such entrance. Respondent as the owner of the station property has a special right of access which is a property right; and it has also a special property interest in having such sidewalk unobstructed for the public doing business at that station. Both the right and the interest are a part of the value of the station property, and are entitled to the same protection as the station itself. Petitioners *continuously occupy* a considerable portion of the sidewalk at the entrance of such station *for the carrying on of their business.* In so doing they create an *illegal obstruction there,* which, as to the general public, is *a public nuisance;* and which, as to respondent, with respect to its station and its business with the public there, is *a private nuisance* which deprives

respondent of valuable property rights. As entering in twos and threes and plying their trade *inside* is a continuing and repeated trespass upon that property, so the gathering *in groups of from eight to twenty* on the sidewalk *just outside the entrance*, and there carrying on their business in the manner described in the bill, is a continuing and repeated trespass upon respondent's property rights as the owner and operator of a great railroad station.

Petitioners' counsel, at considerable length, cite authorities to show that the respondent has no rer ly because the fee of Canal street is in the City of Chicago. These cases are, we conceive, not in point. Because the fee of Canal street is in the City of Chicago, and the occupation of hackmen, expressmen and hotel runners are under the control and supervision of the city council, it does not follow that the city can give such men the right to do business upon a public street abutting private property in such a way as to interfere with the owner's property right of access, light and air. The authorities are all against petitioners' claimed right to carry on a business on a public sidewalk to the injury of the abutting owner by the practical destruction of his own access and his property right and financial interest in the public's freedom of access to his place of business.

Petitioners' counsel lay great stress on the various hack ordinances of the City of Chicago, and particularly on the ordinance creating hack stand No. 6, which grants permission, not to *hackmen*, but to their *vehicles*, to stand while waiting for employment "at all

railroad depots ten minutes previous to the arrival of all passenger trains." (Rec., 161.)

So far as this record shows, the only hack stand established by ordinance at or near respondent's station, is hack stand No. 4 (Rec., 10), on the east side of Canal street, occupying 110 feet of respondent's station frontage between Adams and Madison streets, and which for many years last past has been continuously occupied and enjoyed by petitioners.

Neither the above hack stand No. 4, nor No. 6, pretends to give any right to hackmen to stand while waiting for employment *in front of the main entrance of railroad depots, nor does it sanction the use of the sidewalk in front of such entrances to the annoyance of passengers, or inteference with railroad employes in the proper discharge of their duties.* An ordinance which in express terms or by implication should attempt to create such an invasion of property rights, and interfere with public rights and duties, would manifestly be illegal and void.

Counsel say on page 33 of their brief, that the regulation adopted by respondent compels the incoming passengers to accept the Parmelee omnibus or express wagons, "and pay the charges which that company may demand." By the regulations referred to (Rec., 9) the Parmelee Company can and does make only such charges for services as are permitted by the ordinances of the City of Chicago.

Counsel again say:

"Or in case the passengers are intending to board a train of respondent in its station, in order to have their persons and baggage delivered at the entrance

to said station, must engage a Parmelee Transfer Company omnibus, or consent to be put down at a great distance from the entrance to the station." There is no warrant in the record for said statement, nor is it true in fact. It is a fact well known to petitioner's counsel and the general public, that for years past all of respondent's street frontage extending from Adams street north to the south entrance to its said station, has been freely used by the public in delivering passengers and baggage for transportation over the said railway.

Petitioner's counsel say on page 27 of their brief: "Railway depots in Illinois by law are free to the public, and subject to regulations prescribed by law." In support of this unqualified assertion, reference is made to the *obiter dicta* in the opinion in *Pennsylvania Company* v. *City of Chicago*, 181 Ill., 289, and the constitution and laws of Illinois.

As shown elsewhere in respondent's brief, the decision above referred to is entirely irrelevant to the questions involved in the case at bar, while a perusal of the excerpts from the Constitution and laws quoted by petitioner's counsel, discloses not one word in support of the above sweeping allegation, nor does the said Constitutional provision or laws place any such limitation or restriction on the use and control of real estate owned by railroad corporations as is above claimed.

Had counsel been content to allege that railway depots in Illinois are by law free to the public who go there as passengers or otherwise, but not to those who go there for the purpose of carrying on a private

business, they would then have correctly stated the law on that subject.

In 1 Lewis on Eminent Domain (2nd Edition), page 191, adverting to some of the earlier cases which denied a remedy where the fee to the street was not in the abutter, he says:

"On the other hand, many recent cases question or repudiate distinctions based upon the ownership of the fee as respects the uses which the public may make of the soil or the right of an abutter to compensation. The opinion of the text writers also incline in the same direction."

And again, at page 195:

"Whether, therefore, the public has an easement only or the fee, it has nothing more than a perpetual right to use the land for street or highway purposes. The street cannot be devoted to other uses which violate the rights of the abutting owner."

And again at page 196:

"It seems every way desirable that a distinction which is never made in the every day dealings between man and man touching abutting property, should be abandoned by the courts. There is no substantial distinction between a perpetual easement for street uses and a fee for street uses."

In Elliott on Roads, 2nd Edition, page 761, it is said:

"Municipal corporations cannot transfer rights which the municipality does not possess, and the easement of access is a private right entirely distinct from that of the public, and the easement of access is a private right which remains in the owner and does not pass under a grant of the right of occupancy made by the municipal corporation."

In *Benjamin* v. *Storr*, 9 L. R. Com. Pl., 400, it was shown by the evidence, that from the too long stand-

ing of horses and wagons of the defendants in the highway opposite plaintiff's house, the free passage of light and air to plaintiff's premises was obstructed, and the plaintiff was in consequence obliged to burn gas nearly all day, and so to incur expense.

In delivering the opinion of the court, BRETT, J., held, that in that class of cases there are three things which the plaintiff must substantiate, beyond the existence of the mere public nuisance, before he can be entitled to recover.

In the first place, he must show a particular injury to himself beyond that which is suffered by the rest of the public; that it is not enough for him to show that he suffers the same inconvenience in the use of the highway as other people do, if the alleged nuisance be the obstruction of the highway.

Second. It must be shown that the injury to the individual is direct, and not a mere consequential injury; as where one way is obstructed, but another (though possibly a less convenient one) is left open.

Third. That the injury must be shown to be of a substantial character, and not fleeting or evanescent.

The court then says, on page 407:

"The evidence on the part of the plaintiff showed that from the too long standing of horses and wagons of the defendants in the highway opposite his house, the free passage of light and air to his premises was obstructed, and the plaintiff was in consequence obliged to burn gas nearly all day, and so to incur expense. I think that brings the case within all the requirements I have pointed out. It was a particular, a direct and a substantial damage. As to the bad smell, that also was a particular injury to the plaintiff, and a direct

and substantial one. So, if by reason of the access to his premises being obstructed for an unreasonable time and in an unreasonable manner, the plaintiff's customers were prevented from coming to his coffee shop, and he suffered a material diminution of trade, that might be a particular, a direct, and a substantial damage."

In *Lyon* v. *Fishmongers Co.*, 1 App. Cases, 662, 671, decided in the House of Lords in 1876, the plaintiff enjoined the defendants from constructing an embankment under proper license from the convervators of the Thames, the result of the embankment being to destroy the east front on one side of plaintiff's wharf. It was claimed on the part of the defendants and the conservators that the proposed action was authorized by act of parliament creating conservators, and that plaintiff's rights to use the Thames was that of the general public. But it was held by the House of Lords, that the plaintiff had special rights of access and use on account of his ownership of riparian rights, which, while inferior to the public rights of navigation, were not extinguished thereby. It was held that the injunction of Vice-Chancellor Mellins was right.

In *Fritz* v. *Hobson*, L. R., 14 Ch. Div., 542, 553-56, an action was brought to enjoin the defendant from obstructing the passage upon which the plaintiff's shop opened. The evidence showed that the defendant, a contractor, had blocked the narrow street in front of the plaintiff's picture, bric-a-brac and tailor shop with crates and building materials for days at a time, and thereby deprived plaintiff of access to his shop and prevented customers and prospective customers from visiting same, or being attracted thither by show windows.

It was held, that the defendant's action amounted to a nuisance which (1) inflicted special and peculiar damage upon the plaintiff different from that suffered by the general public; (2) that it was direct and not a mere consequential injury; and (3), was a substantial character and not fleeting or evanescent. The defendant claimed his use of the street was absolutely within his right. The court held that there being three other passageways to the place where the defendant was constructing a building, it was unreasonable and thereby unjust that all the materials should be carried through the plaintiff's passage, and that the work might have been so carried on as not to block and destroy temporarily the plaintiff's passageway during business hours, and an injunction was sustained.

In looking to the protection accorded private property owners in similar cases in the United States, we naturally turn to the decisions of the State of New York, where questions of this character have most often arisen. As population becomes congested in great trade centers of the large cities of the country, it becomes increasingly important to the abutting owner in such localities that the private right of ingress and egress and the public right of passage to and fro shall not be interfered with or obstructed by the conduct of any business upon a street or sidewalk which tends to obstruct the use of the sidewalk to the extent of committing a private nuisance injurious to the owner. And we find in New York many cases in which the courts have been prompt to grant to the abutting owner adequate remedy by injunction against such private nuisance which show special injury to the complainant.

In *Jaques* v. *National Exhibit Co.*, 15 Abbott's New Cases, 250, 252, the plaintiffs brought an action against the defendant to restrain the continuance of a private nuisance. The plaintiffs were jewelers doing business on Broadway, in the City of New York. They occupied the store on the ground floor of the building, the store having a frontage of 25 feet on Broadway, with two show windows and a doorway for the use of customers. The defendant was a corporation organized for the purpose of manufacturing and exhibiting panoramic and other advertisements. The defendants occupied the front rooms of the second story of the building on Broadway directly opposite plaintiff's store. Defendant took out the front wall of the second story, placed plate glass therein, so that the whole was open to view from the opposite part of the street, and inside the window the defendant constructed a frame along the upper part and sides of which moving advertisements were displayed, which moving panoramas were ordinarily displayed to the public on the opposite sidewalk. At frequent intervals of every day the panorama was removed, and there was revealed to the public in Broadway a stage fitted up with drop curtains, etc. On this stage performances were given of dancing puppets and persons acting in character. These panoramas occupied from 10 to 15 minutes, and were repeated at various intervals during the day and evening. The stage and performance were especially arranged and devised so as to be visable to persons on the opposite sidewalk and were best seen from plaintiff's sidewalk. Defendant's purpose in said show. and the natural result thereof, was to attract, collect and detain crowds of people to the plaintiff's sidewalk. The crowd was

frequently dense, stationary and compact, and extended from the curbstone back to the show windows of plaintiff's store. The crowd was composed in a large measure of idle and noisy persons; it obstructed plaintiff's sidewalk, hindering persons who came in carriages to plaintiff's store from crossing the sidewalk, blocked up plaintiff's doorway so as to keep customers away, and prevented entrance to and exit from their store, and shut out their business doorway and windows from the view of the public.

The court by Beach, Justice, in granting the injunction, prayed for said:

"The exhibitions given by defendant attract a crowd in front of plaintiff's premises at intervals each day, of such size as materially impedes ingress and egress to and from their store, and interferes with the transaction of business in the usual and ordinary way. This, I think, entitled plaintiffs to the relief prayed for against a nuisance."

And the court quotes from *Doellner* v. *Tynan*, 38 How., Pr. 176, and says:

"The rule of the common law, that a man shall so use his own as not to interfere with others, extends to every act as well as to every use, and the mere lawfulness of a trade or calling will not excuse or justify the destruction of, or interference with, the comfortable enjoyment of his property by another."

The court also cites with approval *Benjamin* v. *Storr*, L. R., 9 Com. Pl., 400, cited above by us.

In *Hallock* v. *Scheyer*, 33 Hun., 111, it was proven that the plaintiff and defendants were occupants of adjoining stores upon Grand street, and partially engaged in the same line of business. It appeared that the defendants placed a show case, sign and fence ex-

tending from their store out to the sidewalk in such a manner and of such a height as to obscure the view of the plaintiff's show window, and of his store, thereby tending to exclude his customers from it, and to injure his business.

The court by Mr. Justice Daniels, in granting the injunction prayed for with damages, said page 112:

"These statements were sufficient to establish the creation of a nuisance injuriously affecting the business of the plaintiff, Baranski, and as the defendants had been requested to remove it, and refused to do so, a cause of action for an injunction was disclosed in the case. For an injunction may issue to restrain a nuisance, as the remedy in equity is more adequate and better adapted to reach the justice of the case than a mere action at law for the recovery of damages. It is evident from the case that a suit for damages would be ineffectual because of the inability to produce evidence of their extent, and if the tenant was confined to such an action for his redress, it would require to be constantly repeated on account of the daily reoccurrence of the obstruction. *It is an unlawful use of so much of the sidewalk as is occupied by it,* and the tenant has just cause of complaint on account of its interference with his occupancy and enjoyment of the store leased to him."

Flynn v. *Taylor,* 53 Hun., 111, was a bill filed to restrain the defendant from obstructing a sidewalk. The injunction was granted as prayed for.

It appears that several years prior to the commencement of that action, defendant had erected on the sidewalk in front of his property a platform 90 feet long, 2 feet 6 inches high, and 4 feet 8 inches wide. Said platform projected its entire width across the side walk, and was used by the defendant for loading and unloading trucks. The street was a thoroughfare

fare. The plaintiff owned certain premises on the same side of the street about 80 feet farther west, but in the same block, where he kept a retail liquor store. The platform was of a permanent construction, and the other obstructions named occupied the sidewalk on the average about three or four hours each day. When the horses and trucks were on the sidewalk, pedestrians were compelled to either climb over the platform or walk around through the street. Owing to such obstructions, travel was to a certain extent diverted from the sidewalk in front of plaintiff's premises to the opposite side of the street, where there was a good walk free from obstacles. The trial court found that the passage of the public along said sidewalk was thus unnecessarily and unreasonably interrupted and interfered with by the defendant, and that in consequence thereof the rental value of plaintiff's premises had been diminished.

The court, by Justice Pratt, said:

"The court below found, as matters of fact, that the defendant, for several years, unnecessarily and unreasonably interrupted and interfered with public travel upon the street and sidewalk in question, and that the plaintiff was specially damaged thereby, and these conclusions are sustained by the proofs. *The plaintiff has a clear right to have the street and sidewalk clear of all obstructions*, except such as are reasonable and necessary under all the circumstances. It is not reasonable that during a greater portion of the day the defendant should keep his horses and wagons upon the sidewalk, and thus make the plaintiff, and all others having occasion to use the walk, turn out upon the street in order to get around such obstruction. The plaintiff is injured by having so to turn out in going to and from his place of business. Again, his place of

business is so near to this place that it may well be inferred that custom may be diverted from his place by the inconvenience of his customers in having to pass such obstructions. In a case of such a glaring public nuisance it is not essential to prove great damage to warrant its abatement, but slight special injury is sufficient to give a plaintiff standing in court for redress."

That case was affirmed on appeal by the New York Court of Appeals in *Flynn* v. *Taylor*, 127 N. Y., 596, the court saying, page 599:

"Whenever any person sustains a special and peculiar loss in consequence of an unlawful obstruction to a public street, he may maintain an action in equity in his own behalf for damages and an injunction. * * * The right to maintain the action does not depend on the amount of special damage, provided the plaintiff suffered some material injury peculiar to himself.

"We think that in a populous city whatever unlawfully turns the tide of travel from the sidewalk directly in front of a retail store to the opposite side of the street, is presumed to cause special damage to the proprietor of that store because diversion of trade inevitably follows diversion of travel. The nature of this case was such that the amount of damages could not be shown, and hence the remedy at law would not only be inadequate, but would lead to a multiplicity of suits. * * *

"It is true that no direct interference with the plaintiff's premises or business was shown. The pecuniary loss to him was caused by the indirect effect of the obstructions to the sidewalk upon the public; but when an unreasonable use of a public highway is shown and it also appears that such unreasonable use causes special damages to an individual, he has a personal right of action to compel the abatement of the nuisance."

The leading case in New York on this question is

that of *Callanan* v. *Gilman*, 107 N. Y., 360, which was approved in the last two cases cited by us, and has been many times cited and followed by the New York courts, and is the law of that state to-day.

In that case it appeared that both the plaintiffs and the defendant were extensive retail and wholesale grocers, having stores near to each other on the south side of Vesey street, in the City of New York, and a large portion of the plaintiff's customers, in order to reach that store, were obliged to pass upon the sidewalk in front of the defendant's store. Goods were taken to and from the defendant's store by means of trucks loaded in the street. The trucks were placed in the street adjoining the sidewalk, and then a bridge, made of two skids planked over so as to make a plankway three feet wide and fifteen feet long, with side pieces three and one-half inches high, was placed over the sidewalk, with one end resting upon the stoop of the defendant's store and the other end upon a wooden horse outside of the sidewalk near the truck to be loaded. This bridge was elevated above the sidewalk at the inner end, about twelve inches, and at the outer end about twenty inches, thus entirely obstructing the sidewalk, and goods were conveyed over this bridge to and from the store. Persons wishing to pass upon the sidewalk in front of the store, when the bridge was in place, were obliged to step upon the stoop and go around that end of the bridge. The court below found that the bridge thus remained in position across the sidewalk from four to five hours each business day, between the hours of 9 o'clock A. M. and 5 P. M., and

that it obstructed the sidewalk the greater part of every business day.

The court, by Mr. Justice Earl, said:

"Such an extensive and continuous use of the sidewalk cannot be justified. It was a practical appropriation by the defendant, of the sidewalk in front of his store to his private use, in disregard of the public convenience. Even if, in some sense, such use was necessary to the convenient and profitable transaction of his business, and if the obstruction of the sidewalk was no more, and even less, than it would be by any other method of doing the business, these circumstances do not justify the obstruction. If the defendant cannot transact his extensive business at that place without thus encroaching upon, obstructing, and almost appropriating the sidewalk during the business hours of the day, he must either remove his business to some other place, or enlarge his premises so as to accommodate it. * * *

"From these facts alone, as they are fully set forth, it clearly appears that the plaintiff suffered damage from the nuisance, which was not common to other persons having occasion to use the street. * * * That the plaintiffs suffered some special damage not common to persons merely using the street for passage is too obvious for reasonable dispute. Direct proof of the damage was not needed; all the circumstances show it."

Except in the Hallock case, *supra*, it will be seen that the New York courts have gone much farther than the court below did in the case at bar. In the New York courts relief was granted in equity to restrain the continuance of a private nuisance *in front of defendants' own property*, where such use of the sidewalk was an obstruction to public travel and created a private nuisance to an adjoining and abutting owner upon the same street. In the Flynn case, the plain-

tiff's premises were 80 feet distant from the defendants' obstruction upon the sidewalk. In the case at bar the obstruction is squarely in front of the respondent's main entrance, where the petitioners have neither property nor private rights.

The cases cited by petitioners' counsel on pages 26 and 27 of their brief, are not applicable here. They are largely steam or street railroad cases. In the steam railroad cases, an injunction was refused at the prayer of the abutter because the use was authorized by the owner of the fee, the city, and therefore no property of the abutter was invaded; in the street railroad cases the injunction was denied not because the fee of the street was in the city, but because a street railroad was a legitimate use of the street. And in all the cases the courts have held that such a use is a "street use," because it facilitates public passage along the street, the primary purpose of the street.

In the case of steam railroads laid in the street, their construction and operation is held to be an additional burden on the fee, and may be enjoined by the abutter if he owns the fee.

Bond v. *Penna. Co.*, 171 Ill., 508.

But a street railroad is not an additional burden and cannot be enjoined even by the owner of the fee.

C. B. & Q. R. R. Co. v. *W. Chgo. St. R. R. Co.*, 156 Ill., 255.

The case of *Doane* v. *Lake Street Elevated Railroad Co.*, 165 Ill., 510, carried the doctrine to its limit, in holding that this rule applied to an elevated railroad acting without lawful license from the city to use the

street. Yet there is nothing in that decision or in the opinion of the court that covers any other than a strictly street use. Though the bill alleged in general terms that the abutter's rights of access, light and air were seriously threatened, no case of irreparable injury was made out. If it had been an injunction must have been granted, as was granted by the Court of Appeals for the Seventh Circuit in the recent case of *General Electric R. Co.* v. *C. I. & L. Ry. Co.*, 98 Fed., 909, and 107 Fed., 771.

In the *City of Chicago* v. *Union Building Association*, 102 Ill., 380, which is one of another class of cases relied on by appellants, the court held that the appellee had shown no special or peculiar injury to his property. In that case it was sought to enjoin the vacation of a portion of La Salle street more than four blocks distant from the property of the Union Building Association. There was no interference with the right or access, light and air to the property owned by the Union Building Association at the corner of La Salle and Washington streets by reason of the vacation of La Salle street for a block from Jackson street to Van Buren street.

We believe that no case can be found, in Illinois or elsewhere, for none has been cited by petitioners, that authorizes a set of men to do business upon a sidewalk to the exclusion of the public and the substantial impairment of the abutter's rights of access to his own property essential to its use and value. The very purpose of the street excludes the theory of such use being a lawful one; and in the case of *Pennsylvania Company* v. *Chicago*, 181 Ill., 289, the whole conten-

tion of petitioners is held for naught by the first proposition laid down by the court in that case, page 296, as follows:

"The title of the streets is vested in the city, and it has the conservation, control, management and supervision of such trust property, and it is its duty to defend and protect the title to such trust estate. The *city has no power or authority to grant the exclusive use of its streets to any private person or for any private purposes*, but must hold and control the possession exclusively for public use, for purposes of travel and the like."

In I Lewis on Eminent Domain (2nd Ed.), Sec. 91e, *et seq.*, pages 170 to 196, Mr. Lewis discusses at length the rights of abutting owners to light, air and access. Every word is pertinent to the case at bar, but we can only refer the court to the text quoting a few words strictly to the point.

He says, page 171:

"Numerous cases decided since the first edition of this work, establish beyond question the existence of these rights or easements of light, air and access as appurtenant to abutting lots, and that they are as much property as the lots themselves. * * * The rights or easements of light, air and access, so long as they exist, are indissolubly annexed to the abutting property."

And at page 175 he says:

"When the owner of a tract of land lays the same out into lots and streets and sells the lots, the purchasers of such lots acquire as appurtenant thereto a private right of way and access over the streets. This private right arises without an express grant and in the absence of any statute. * * * Therefore, in the case of such a grant, there arises by operation of law a private right to use the streets in connection with the lots of each proprietor which is as inviolable as

any other right of property. * * * The existence of these private rights and easements is, therefore, entirely independent of the mode in which the highway is established or of the estate or interest which the public acquires in the soil of the street, whether a fee or less."

And at page 174 he says:

"The rights of a railroad company as an owner of abutting property are the same and no greater than the rights of an individual owner."

The author quotes extensively from the case of *Lahr* v. *Metropolitan El. Ry. Co.,* 104 N. Y., 268-290. A part of the quotation is quite pertinent here, though that was an elevated railroad case. The Court of Appeals of New York there held that an abutting owner was entitled to damages and an injunction against interference with his easement of access, light and air, and stated his rights thus:

"An abutting owner necessarily enjoys certain advantages from the existence of an open street abutting his property, *which belong to him by reason of this location* and are not enjoyed by the general public, *such as the right to free access to his premises and the free admission and circulation of light and air to and through his property. These rights are not only valuable to him for sanitary purposes, but are indispensable to the proper and beneficial enjoyment of his property,* and are legitimate subjects of estimate by the public authorities in raising the fund necessary to defray the cost of constructing the street. He is, therefore, compelled to pay for them at their full value, and if in the next instance they may by legislative authority be taken away and devoted to an inconsistent purpose, a system has been inaugurated which resembles more nearly legalized robbery than any other form of acquiring property."

Though Illinois courts hold that an elevated railroad

is not such an invasion of those rights, as will warrant equitable relief, they do not differ from the New York courts as to the nature and extent of such rights of an abutter.

In *Carter* v. *City of Chicago*, 57 Ill., 283, the authorities of Chicago were endeavoring by ordinance to appropriate one side of the street for the purpose of a roadway, whereby the abutting owners would be deprived of any sidewalk. The court held that the property owner was not relegated to an action at law for damages, but was entitled to relief in equity without showing irreparable injury—his rights and its invasion being both clearly shown. The court, by Mr. Justice McAllister, said, page 287:

"The plaintiff and the other lot owners purchased their lots with reference to the dedication of Franklin street to the public for the ordinary purposes of a street. It is an abuse of authority to so deprive these parties of a sidewalk, as to compel them to appropriate their court yards for that purpose, even if the lot owners could do so. But they cannot."

And the court added:

"And what seems strange is that at this age of equity jurisprudence, there should be doubt as to the jurisdiction of a court of equity to grant relief; yet that is the only question really involved in this case."

As in the Carter case, the legal effect of appellant's claim, if allowed, would be to deprive appellee of that which it paid large sums of money for—the unobstructed use of its sidewalk and street frontage, subject only to the public right of free passage to and fro.

In *Field* v. *Barling*, 149 Ill., 556, 561, 563, a bill was

filed to enjoin the construction of a bridge or passage-way over the alley known as Holden place, between Marshall Field's two stores on Washington street. The bill alleged that the complainant would be deprived "to a great extent of sunshine, light, air and warmth," and that the threatened construction would "hinder and deter traffic, and in many other ways cause serious and continuing damage to your orators and their property; and that such damages will amount to many thousands of dollars, and will be beyond legal remedy or relief if not prevented by this court." The bridge was authorized by an ordinance duly passed and approved.

An injunction issued, and on appeal the decree was affirmed. In its opinion the Supreme Court cited *Newell* v. *Sass*, 142 Ill., 104, as a case in point, and quoted (page 570):

"But appellee's right is established by showing that she owns an easement—the right of passage—incident to her ownership of her lot. * * * It is not necessary in such case that the easement claimed by the grantee must be really necessary for the enjoyment of the estate granted. It is sufficient if it is highly convenient and beneficial therefor. (*Cihak* v. *Klekr*, 117 Ill., 643.) 'Irreparable injury,' as used in the law of injunction, does not necessarily mean 'that the injury is beyond the possibility of compensation in damages, nor that it must be very great; and the fact that no actual damages can be proved, so that in an action at law the jury could award nominal damages only, often furnishes the very best reason why a court of equity should interfere in a case where the nuisance is a continuous one.' (Elliott on Roads and Streets, 497.) * * * And this court has, in harmony with these authorities, held that injunction will lie to prevent obstruction to a private way, on the ground that the party has no adequate remedy at law."

In further speaking of the interest of the abutting owner in the streets, the court said (p. 571):

"The dedication of the street by the plat, the sale of lots with reference to it, conveyance of abutting lots and the payment of the money for the conveyances, were elements sufficient to create the right. The right may be regarded in the nature of an incorporeal hereditament. It becomes appurtenant to the lots. As to the rights secured, they are plain: to have the street kept open, so that free access may be had to and from the lots abutting on the street."

In *Hart* v. *Buckner*, 54 Fed., 925, the Circuit Court of Appeals held:

"Owners of lots abutting on or adjacent to a public street of a city, even if not owners of a fee in the street, have the right of access, and the right of quiet enjoyment, and such rights are property which may be protected by injunction when invaded without legal authority."

In *McDonald* v. *Newark*, 42 N. J. Eq., 136, 138, 139, a house owner was granted an injunction against the use of a portion of the street in front of his house for a market place or stand for the sale of goods, even though such use had been licensed by the city and it had taken pay for the use thereof. The court said:

"The use is not only a public nuisance, but it is so far as the complainant and others similarly affected are concerned, a private nuisance also. Where, as in this case, an individual is especially injured by the unauthorized use of a street, he may have recourse to this court for relief."

Cabmen, expressmen and hotel runners have no more right to continuously block the entrance to respondent's station, and interfere with its free use, than has the apple woman with her basket, or the fruit vendor with his push cart, or the huckster with his wagon,

all of whom hold licenses from the city to ply their callings in the streets.

Judge Dillon, in 2 Dill. Mun. Corp. (4th Ed), Sec. 587b, says:

"For example, an abutting owner's right of access to and from the street, subject only to legitimate public regulation, is as much his property as his right to the soil within his boundary lines. When he is deprived of such right of access or of any other easement connected with the use and enjoyment of his property other than by the exercise of legitimate public regulation, he is deprived of his property."

And again he says, Sec. 656a:

"But it was further seen that he had rights not shared by the public at large, special and peculiar to himself, and which arose out of the very *relation of his lot to the street in front of it*, and that, *these rights, whether the bare fee of the streets was in the lot owner or in the city, were rights of property and as such ought to be and were as sacred from legislative invasion as his right to the lot itself.*"

And Mr. John Lewis, author of "Eminent Domain," says in a note to 1 American Railroad & Corporation Reports, p. 47:

"It is now well settled that every owner of property abutting upon a public street has a right of ingress to and egress from his property upon and over the street in front of it, and the right to light and air therefrom, which are appurtenant to his lot, and are within the protection of the Constitution."

In 1 American & English Ency. of Law, 2nd Ed., 238, speaking of rights of abutters, it is said:

"The right is a species of private property of which the owner may not be deprived without due compensation and it is a right which he may have enforced by writ of injunction."

In *Branahan* v. *Hotel Co.*, 39 Ohio St., 333, where the court sustained an injunction against the maintenance of a hack stand on the public street abutting the hotel company's property, the court said:

"The rights of the public to use it as a street and of the adjacent lot owner to enjoy it as the means of access to his property cannot be materially impaired. The city has the right to regulate hackney coaches and also the right to appropriate private property for the use of the corporation, but it has no power to appropriate the easement of an adjacent owner to a mere private use. This permanent occupancy of the streets cutting off access to plaintiff's store rooms, for the convenience and benefit of a private business, cannot be justified on the plea that the public who use hacks are accommodated more readily and on better terms. The same would, doubtless, be the case with other kinds of business located in the streets."

In not one single case cited by petitioners in support of their pretensions in the case at bar, is there, or was there such a state of facts as exist in this case. In not a single case cited by them did it appear that the hackmen sought to be enjoined, interfered with the exits or the entrances to the passenger station, nor that they congregated outside the station upon the sidewalk abutting it in such numbers as to interfere with the proprietary rights of the railway company to the use of its abutting premises and the street, and with the free ingress and egress of the passengers to and from such street and station, and with the duties which the railway company owed to its passengers to give them a free and unobstructed entrance to and exit from its station.

II.

(B) THE ALLEGATIONS OF RESPONDENT'S BILL ARE FULLY SUSTAINED BY THE PROOF.

The general denial of the answer and the accompanying affidavits when carefully examined do not meet or overcome the case made by the bill, and its accompanying affidavits. The main entrance to the station it is admitted, consists of three doors each five feet wide, opening upon a twelve foot sidewalk, and over this sidewalk pass nearly 30,000 persons daily. That, in order to provide for a comfortable and safe transfer of all such passengers as desire it, arrangements have been made by the respondent as already stated. That the petitioners, hackmen, expressmen and runners for hotels, daily gather in groups of from eight to twenty men at a time and endeavor by importunity and frequently by force to obtain a part of the patronage away from the company to which the right to solicit it there has been granted by the respondent. It is not a matter of two or three, as iterated in the brief for petitioner, but of a noisy, boisterous, jostling and often filthy group of from *eight to twenty.*

The answer admits that there are some thirty-five or forty hackmen, expressmen and hotel runners engaged in plying their vocations at that station and endeavoring to get as much as possible of the transfer business away from the Parmelee Company, and that all hack drivers are members of an organization interested in depriving the Parmelee Company of all

of its exclusive privileges, and claiming, each for himself, the same rights that the agents of the Parmelee Company exercise there. But they deny, in general terms, that they have "interfered with or obstructed any of the entrances to said depot," or "with the free passage of any passenger." *The admissions so made nullify the general denial of the answer.* The bill is supported by nineteen affidavits stating in detail repeated acts of interference with passengers, and obstructions and blocking of the main entrance, and boisterous conduct by throngs on the sidewalk in front of such entrance. These affidavits are made by the policemen stationed there, officers and agents of the railroad companies using said station, and by Mrs. Gridley, the representative of the Young Women's Christian Association, who is on duty at that station every day from 8 o'clock A. M. until 5:15 P. M. She states that she has frequently seen in front of said main entrance from twelve to twenty cab drivers and expressmen plying their trade and acting in a noisy and boisterous manner, and expectorating upon the sidewalk immediately in front of such entrance; and that in the performance of her duty, she is stationed near such main entrance, and has frequently been interfered with in the performance of such duty by these cabmen blocking the entrance and rushing in front of her. All of the respondent's affidavits are to the same effect.

Opposed to this is the formal denial of the answer and the affidavits of eleven proprietors of saloons, restaurants and cigar stands on the west side of Canal street, who testify to their lack of knowledge of any

such obstructions and disturbances as are alleged in the bill. Not one of them could have any definite knowledge of the matter, because the main entrance to the station and the sidewalk in front of it are hidden from view from the opposite side of the street by the Parmelee busses, as is shown by the affidavits; besides it is incredible that in such a throng as is constantly entering and leaving the station, a person from the opposite side of the street without an uninterrupted or unobstructed view could know anything about what the cabmen and runners were there doing. Four of the cabmen make affidavits denying any obstruction, use of chewing tobacco or boisterous language; but not a single affidavit is filed in support of the answer by persons shown to be actually acquainted with the conduct of the petitioners at such station, except the general affidavits of the said petitioners.

It, therefore, is made clearly to appear both upon the legal questions and upon the question of fact, that the respondent has certain rights in such station, and in the free use of the sidewalk appurtenant thereto, as a means of entrance and exit which the petitioners are unlawfully interfering with and injuring by repeated and continued trespasses under a claim of right. That these rights are property rights of specially great value, and that the acts of the petitioners seriously and irreparably damage these rights, injure the station property and prevent respondent from the performance of a duty it owes to the traveling public.

III.

INJUNCTION IS THE ONLY ADEQUATE REMEDY IN THE CASE AT BAR.

The general rule of affirmative relief in such cases is laid down in 1 Spelling on Injunctions (2nd Ed.), Sec. 338, where it is said:

"Where the injury resulting or likely to result from the trespass is irreparable in its nature, either in respect of being compensated for pecuniarily, or because from the circumstances no estimate of the damages can be made with reasonable accuracy, the inadequacy of legal remedies is sufficiently apparent, and a temporary injunction will be granted in the first instance pending an adjudication of the legal rights, though the same be in dispute."

And in Sec. 340:

"The irreparable damage here meant usually results from repeated wrongs of a continuing character resulting in damages which are not estimable by any accurate standard, and can only be conjectured. Against such wrongs as these, courts of equity rarely refuse to grant relief by injunction."

And again, in section 342:

"Where numerous acts are being committed and their continuance threatened by one person on the land of another, which acts constitute trespass, and the injury resulting from each act is or would be trifling in amount as compared with the expense of prosecuting actions at law to recover damages therefor injunction will lie to restrain the trespass not alone because of the irreparable nature of the general course of wrong, nor yet for the sole reason that a multiplicity of suits or protracted and vexatious litigation would result, but for both reasons."

In 1 Am. & Eng. Ency. Law, 2nd Ed., page 225, it is said:

"The owner of property abutting on a public highway is entitled, as one of the primary incidents of his ownership, to the right of free ingress and egress. This right exists whether the abutter owns the fee to the center of the street, leaving the public with merely an easement of passage, or whether the title to the entire highway is vested in the latter.

The right is a species of private property of which the owner may not be deprived without due compensation, and it is a right which he may have enforced by the writ of injunction."

In section 637, Mr. Lewis says:

"The abutting owner, may in general, enjoin any use of a street which is foreign to its purpose as a public highway and is calculated to produce special damage to his property."

In 1 High on Injunctions, section 816, it is said:

"The remedy by injunction is the most efficient means of preventing obstructions to public highways, and where the facts are easy of ascertainment, and the rights resulting therefrom are free from doubt, the relief will be granted at the suit of a citizen having an immediate and special interest in the matter. And the owner of a lot abutting upon a street sustains such a special injury, different from that sustained by the public, as to entitle him to maintain an action to restrain the unauthorized obstruction of the street in front of his premises."

And again, in section 820, Mr. High says:

"When the right of the public to the use of a highway is clear, and a special injury to plaintiff is threatened by its obstruction, such injury going to the substance and value of plaintiff's estate and being of a permanent character, equity may properly enjoin."

In the latest text writer on the subject, Elliott on Roads, page 496, it is said:

"In addition to the right of the public to maintain a suit in equity for an injunction, private citizens who are specially injured by an obstruction and interested in preventing its continuance, may, upon a proper showing, maintain a suit in equity for an injunction. But unless a special injury is shown, the plaintiff will not be entitled to an injunction. It has also been held that the injury must be irreparable, or at least not capable of full and complete compensation in damages. This is no doubt a fair statement of the general rule but the phrase, 'irreparable injury,' is apt to mislead. It does not necessarily mean, as used in the law of injunction, that the injury is beyond the possibility of compensation in damages, nor that it must be very great. And the fact that no actual damages can be proved, so that in an action at law the jury could award nominal damages only, often furnishes the very best reason why a court of equity should interfere in cases where the nuisance is a continuous one. * * * If the nuisance is a continuing one invading substantial rights of the complainant in such a manner that he would thereby lose such rights entirely, but for the assistance of a court of equity, he will be entitled to an injunction upon a proper showing, notwithstanding the fact that he might recover some damages in an action at law."

There is, therefore, among all the recognized text writers substantial unanimity, that under the facts of the case at bar, respondents are entitled to the remedy by injunction.

In *Chicago General Ry. Co.* v. *C., B. & Q. R. Co.*, 181 Ill., 605, 611, the basis of equitable jurisdiction at the prayer of an individual against obstructions in public streets is that the bill must show that the individual "will suffer a special injury," and "sustain

irreparable damage." And the latter is thus defined:

"When irreparable injury is spoken of it is not meant that the injury is beyond the possibility of repair, or beyond the possibility of compensation in damages, but it must be of such constant and frequent recurrence, that no fair or reasonable redress can be had therefor in a court of law. (2 Wood on Nuisances, 3rd Ed., Sec. 778; Elliott on Roads and Streets, p. 497.)"

In *Edwards* v. *Haeger*, 180 Ill., 99, 108, the court said:

"It is urged an injunction will not be granted to restrain a trespass. This is the rule as to a single act of simple trespass to property, but where a trespass has been committed and repetitions thereof are threatened, and an injury which follows such trespass is irreparable in damages, equity will interfere by injunction."

"When the injury is irreparable, it is not essential to equity jurisdiction that a bill for an injunction shall also allege the party to be restrained is insolvent."

In *London & N. W. Ry.* v. *Lancashire and Yorkshire*, L. R. 4, Equity Cases, 174, 178, the question arose on demurrer to a bill for injunction by one railway company against the construction and maintenance by another of a barrier partly on public street and partly on plaintiff's land, tending to divert persons from plaintiff's railroad.

The court, by Sir W. Page Wood, V. C., said:

"Then the bill alleges that they are rivals in traffic with defendants; that persons have daily used this foot path as passengers on their railway; and that the obstruction in question, by the defendants, is for the express purpose of diverting that traffic and inducing

persons to travel on defendant's line of railway, whereby the plaintiffs will be irremediably damaged. This, one can easily see, is most likely to take effect; as, if passengers are prevented from using one easy mode of access which they were daily in the habit of using, the diversion of that traffic will arise, and it is that sort of damage which cannot be measured. There is no mode of estimating it. It is just as if a large shop in Regent street, having two entrances to its place of business, constantly used, and by which the business had been largely increased (one in Regent street and the other in a side street), were to find that some one has taken upon himself to close up one of those entrances. It is just one of those cases of trespass and irremedial damage which the court does interfere to prevent. Demurrer must be overruled."

The last case in point decided by the Supreme Court of Illinois is that of *Lowery* v. *Pekin*, 186 Ill., 387, decided more than a year after the case of *Pennsylvania Co.* v. *City*, 186 Ill., 397. In that case Lowery filed a bill to obtain a perpetual injunction against the City of Pekin and others to restrain interference with complainant's easement on a public road. The road was upon an embankment situated upon ground, two-thirds of which was owned by the city, and one-third of which was owned by the complainant. The City of Pekin appropriated the embankment upon the road, and made it a part of a public highway owned by the city. Lowery had an easement for a term of years in the portion of the ground owned by the city prior to his abandonment of it and prior to the seizure of the embankment and the turning it into a highway. The court below denied the relief to Lowery on the ground that he had a remedy at law, and dismissed his bill. The Supreme Court reversed said decree, and decreed that

a perpetual injunction should issue. The court said (page 397):

"We can see no reason why the city should have appropriated the property of a private citizen without paying him therefor. * * * It is said that the city cannot be enjoined from using and holding the possession of the property of plaintiff in error for the purposes of a public highway upon the alleged ground that plaintiff in error, if he has suffered any wrong, has a remedy at law, either in ejectment for the recovery of the possession of his property, or in trespass to recover damages thereto. But this is not a case where it is sought to enjoin a simple trespass. This is a case where a municipality, under claim of right, is unlawfully trying to take the property of a private citizen. It is well settled that injunction is a proper remedy where cities or public officers, under color of power or claim of right, are illegally attempting to injure, or take the property, or impair the rights of a citizen. (*Smith* v. *Bangs*, 15 Ill., 399; *City of Peoria* v. *Johnston*, 56 *id.*, 45; *Carter* v. *City of Chicago*, 57 *id.*, 283; *Bryan* v. *City of East St. Louis*, 12 Ill. App., 390.)

"The injury here complained of is one of a continuing or permanent nature, for which an action at law does not afford a complete and adequate remedy. (*Carpenter* v. *Capitol Electric Co.*, 178 Ill., 29; *Sterling's Appeal*, 111 Pa. St., 35.) The plaintiff in error has here a right of way over certain property belonging to the city, that is to say, he has an easement in certain real estate, and the action of the city in taking possession of his embankment and making it a part of the public highway, obstructs such easement, and, therefore, equity has jurisdiction to enjoin such obstruction, inasmuch as the injured party has no adequate remedy at law. (*McCann* v. *Day*, 57 Ill., 101; *Carpenter* v. *Capital Electric Co.*, *supra*.) It is well settled that where a right of way is obstructed or an easement is interfered with, injunction will lie. (*Chicago General Ry. Co.* v. *Chicago*,

Burlington & Quincy Railroad Co., 181 Ill., 605; *O'Connell* v. *Chicago Terminal Transfer Railroad Co.*, 184 *id.*, 308; *Newell* v. *Sass*, 142 *id.*, 104.)"

That equity affords relief in cases precisely similar to the one at bar is shown by the authorities hereinbefore cited under point IV of this brief.

In the *N. Y. Cent. R. Co.* v. *Flynn*, 74 Hun., 124, *supra*, the lower court granted a temporary injunction restraining the defendants, who were hackmen, not only from "entering or being upon the lands of the said plaintiff," but also from "*obstructing and interfering with or blocking up the passage or entrance to said depot, depot grounds, or buildings, and from in any manner interfering with and preventing the free and uninterrupted right of ingress and egress*" to and from said station premises.

The defendants there, as petitioners here, claimed that they were entitled to the same rights and privileges on the depot grounds as a transfer company to which an exclusive right had been granted and that such exclusive contract was contrary to the New York statute. That statute provides:

"No preference for the transaction of the business of a common carrier upon its cars or in its depots or buildings or upon its grounds shall be granted by any railroad corporation to any one of two or more persons, associations, or corporations competing in the same business."

The Supreme Court in a unanimous opinion adopted the reasoning and decision in the *Old Colony R. Co.* v. *Tripp*, 147 Mass., 35 (cited *supra*), and said:

"It is clear that the defendants have no right on the plaintiff's premises unless such right is provided

by the above quoted statutory provision. * * * It would be unfortunate if railroad corporations should have no control of their premises as against hackmen, and a construction of the statute is to be regretted that would give in our cities and villages all the hackmen of the place the absolute right to enter upon and make a stand of the premises of railroad corporations for the purpose of soliciting passengers; that *in fact allows a mob of hackmen around railroad depots and prevents a railroad corporation from adopting proper measures to protect its passengers from undue solicitation and annoyance when leaving its grounds.*"

The order of the lower court was affirmed.

In *N. Y. Cent. R. Co.* v. *Sheeley*, 27 N. Y. Supp., 185, *supra*, the railway company sought an injunction against Sheeley and others to restrain the defendants from entering upon the station grounds at the City of Niagara Falls for the purpose of soliciting incoming passengers. The injunction was granted as prayed.

In *Snyder* v. *Union Depot Co.*, 19 Ohio Cir. Ct., 316, the Union Depot Company had given to the Columbus Transfer Company the exclusive privilege of standing its vehicles in the depot upon the driveway from High street to the waiting rooms, and of soliciting customers, and excluded therefrom others engaged in the like business excepting only for the purpose of delivering passengers or calling for persons who had previously engaged them. The plaintiff sought an injunction to restrain the defendant from excluding him from the station premises while soliciting business. The Common Pleas Court issued said injunction, and the Circuit Court reversed it on writ of error, holding that such exclusive contract was valid, and the hackmen

had no right to enter the station grounds for the purpose of soliciting trade.

In *N. Y., N. H. & H. R. Co.* v. *Scovill*, 71 Conn., 136, the railway company sought an injunction against defendants to prevent their entering the station grounds to solicit passengers or baggage without permission of the railway company. Defendant threatened that he would continue the same. The court below refused the injunction; the Supreme Court reversed such decision and ordered that the injunction be issued.

In that case the court said, and the language is peculiarly applicable to the pretensions of the petitioners in this case, that they can enter upon the railway company's property and do business there at their own will without reference to the wishes of the railway company:

"A railway company which is operating a railroad in its possession has the ordinary right belonging to every owner of real estate of excluding from entry upon it all who come without its consent and can show no superior legal title."

In that case for the protection of passengers an exclusive contract had been given to one cab company, and the defendant claimed the right to enter the station and, equally with the company to which said contract had been given, solicit incoming passengers, and denied that injunction was the proper remedy.

The court in answer to that contention and in ordering the injunction to issue said:

"Enough circumstances were elsewhere disclosed to show that the damage might be great from the obstruction caused by the presence of intruders to the expedition of trains and the proper management in

general of the plaintiff's business. A judgment at law, also, would be no guaranty against future trespasses; and it is explicitly alleged that there are contemplated and threatened. Such wrongs in respect to land in the use of which the public interest is involved, may be prevented by injunction."

In *Boston & Maine R. Co.* v. *Sullivan*, 177 Mass., 230, the railway company brought a bill for injunction to restrain hackmen from entering its station grounds to solicit passengers and baggage. The relief was granted, it being held that the bill was not demurrable for failure to allege plaintiff had been injured in such trespasses, since *damage is the necessary result of such trespasses.*

In that case the court said:

"The only question of importance, then, is whether complainant should have resorted to an action at law, as was done in the two cases cited, or whether it is also entitled to maintain a bill in equity. The facts show that the defendants have been guilty of trespasses, which they propose to continue. The ownership of the plaintiff is admitted, and no question of title is involved. Nor is any claim to a right of way over the plaintiff's land set up in the answer of the defendants. It seems to us clear that the bill in this case may be maintained. If the plaintiff were to sue at law, the amount recoverable could not be large, in comparison with the amount expended in litigation, and every trespass would give a new right of action. Hence, there would arise a great multiplicity of suits. At some time the plaintiff would be entitled to the protection of a court of equity, and there is no reason why, on the facts of this case, the remedy by injunction should not be granted at once."

The court quotes with approval from the opinion of Sir W. M. James, L. J., in the case of *Goodson* v. *Richardson*, 9 Ch. App., 221, as follows:

"The defendant in this case is admittedly a trespasser. He has committed a trespass upon the plaintiff's land without any legal justification or any legal excuse whatever, and he proposes to continue that trespass from day to day * * * for the purpose of making profit of a trade which he proposes to set up in rivalry to a trade which the owner of the land upon which he is so committing the trespass is interested in. It is said that we ought to allow this to be done; that we ought, in fact, to dismiss the plaintiff from this court and tell him to find his way to another court in which he is to bring an action for the wrong, *for which there is no defense whatever.* He is to bring that action at his own cost, and, having succeeded in one action, he is to bring a second (I do not know whether more than one will be required), and then having succeeded in one action, or two actions, or perhaps three actions, all of which, on the facts proved in this case, would necessarily result in verdicts for him, he is to come back to this court and obtain a perpetual injunction, on the ground of repeated vexation and repeated action. I do not think there is any principle of this court which will compel us to drive the plaintiff to go through all that litigation before he is entitled to that relief which he would ultimately get when he had gone through it."

In the case at bar, it appears that the respondent has spent above $800,000 for the purpose of a passenger station for the use of five great trunk lines of railroad having their termini in the City of Chicago, and that one inducement to expend this great sum of money was the value of the frontage upon Canal street, and without the full and uninterrupted use of said frontage for the business of said station and the use of the public at said station, it would be valueless, because the business of the station could not be carried on. Yet these petitioners insist that they can, with-

out the consent of respondent take away its right to the uninterrupted use of this great property, and by their numbers and acts obstruct the sidewalk at the one point where the free use of its property is of the utmost necessity to respondent, its tenants and its passengers.

Petitioners' contention is as absurd as if they were to insist that because the peddlers in Chicago have licenses from the city to do business as peddlers, and because vast numbers of shoppers congregate on the sidewalk in front of the main entrance of Marshall Field's mammoth retail store on State street, in Chicago, and because it would be convenient for the public and profitable for the peddlers, they have a lawful right to ply their avocation at that place.

In no respect is respondent's property right less than that of Mr. Field or any other property owner. On the contrary, it has a greater right to a free passage in and out of its station, because there is cast upon it by law a duty to all its passengers to see that they have a safe, convenient, free and unobstructed entrance, to and exit from its station.

But it is unnecessary to amplify when courts of eminence have spoken in such unqualified terms as they have in the cases cited above. Respondent's rights are fully set forth; its injuries are apparent; the trespasses are substantially admitted in the answer; and the actual right to commit such injuries, insisted upon by petitioners. Under all the authorities and the law of the land respondent is entitled to the remedy by injunction.

If giving to the Parmelee Company a place in the

station at which to solicit passengers for cab and carriage services compels the railroad company to grant facilities for soliciting such services for the benefit equally of all cabmen, does it not necessarily follow that when it grants upon its station property, abutting Canal street, a cab stand for the cabs and carriages of the Parmelee Company, it is likewise required to permit all cabmen to enjoy equally the use of that private cab stand.

In *Seattle Gas & Electric Co.* v. *Citizens Light & Power Co.*, 123 Fed. Rep., 588, complainant sought to restrain the defendant, a corporation of New Jersey, from laying and maintaining gas pipes in the streets of the city on two grounds:

(1) That the defendant corporation was not authorized by its charter to engage in the gas business, and that its transactions in that respect were *ultra vires*, and

(2) That the defendant had pursued and was pursuing systematically a vexatious course towards complainant by excavating the streets and laying gas pipes parallel to and in such near proximity to the complainant's pipes as to cause serious and unnecessary injury to the complainant's system, and increase the burden and expense of maintaining the same.

The court held that as a general rule a private citizen could not question the right of a corporation to carry on its business within a state, under a license from or by permission of the state government, and that so long as the authorities of the state did not see fit to proceed against the offending corporation the

courts would presume that the corporation had at least an implied license, but the court says:

"Like all general rules, however, this one has its exceptions, founded in reason, and where a private suitor complains of unlawful transaction creating a public nuisance, and causing special and irreparable injury to him, the courts have no right to refuse relief. The question as to the right of a corporation to use a public street, under an invalid franchise was considered and passed upon by the Circuit Court of Appeals for the Seventh Circuit in the case of *General Electric Railway Company* v. *The Chicago Indianapolis & Louisville Railway Company,* 98 Federal Reporter, p. 908, 37 C. C. A., 345, 58 L. R. A., 231, in which case an injunction granted by the United States Circuit Court for the Northern District of Illinois of Illinois was sustained, and the court held that an injunction to prevent the construction of a street railway, under an invalid ordinance may be granted in favor of a railroad company when the operation of the street railway will interfere with access to the railroad freight house and track yard, thereby causing direct, immediate and special injury, for which the railroad company has no adequate remedy at law."

And the court held that as the laying of defendant's gas pipes in the streets of the city parallel to those of complainant added heavily to the expense and care necessarily incidental to the maintenance of complainant's system and increased the danger naturally and incidentally to the distribution of gas, that complainant had a right to question the power of the defendant, under its charter to engage in the gas business and the defendant not having that charter power, complainant was entitled to an injunction restraining such action.

The court below having affirmed the granting of the injunction in strict accordance with the law and the facts, we respectfully submit that its decree should be affirmed, and the writ dismissed.

Respectfully submitted.

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EDGAR A. BANCROFT,
CHARLES F. LOESCH,
Counsel for Appellees.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1904.

No. ~~111~~ 5.

HARRY DONOVAN et al.,
Petitioners,
vs.
PENNSYLVANIA COMPANY,
Respondent.

Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

MEMORANDA FOR ORAL ARGUMENT ON BEHALF OF RESPONDENT.

FRANK J. LOESCH,
EDGAR A. BANCROFT,
CHARLES F. LOESCH,
Counsel for Respondent.

THE GUNTHORP-WARREN PRINTING CO., 118 RANDOLPH STREET, CHICAGO

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1904.

No. 115.

HARRY DONOVAN et al.,
Petitioners,
vs.
PENNSYLVANIA COMPANY,
Respondent.

Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

In *Norfolk & Western R. Co.* v. *O. D. Baggage Co.*, Virginia, 50 L. R. A., 722-724 (1901), the same question arose; but it was considered only with respect to such an exclusive agreement being a violation of the statute of Virginia, which made it unlawful for any common carrier "to make or give any undue or unreasonable preference or advantage to any particular person, company, firm * * * in any respect whatsoever, or to subject any particular person * * * to any undue or unreasonable prejudice or disadvantage, in any respect whatever." It was *held*, that the section having been adopted from the English statute, the construction of the English courts upon it, prior to its adoption, would control the courts of Virginia; and

the decision in the *Barker case* (18 C. B., 46) was followed. As shown by the report, the question was argued in the briefs of counsel along the line drawn here.

In connection with the most recent decision, *Hedding* v. *Gallagher*, 72 New Hampshire, 377 (64 L. R. A., 811), it is noteworthy that when that cause was first before the Supreme Court of New Hampshire, a contrary decision was rendered. (See *Hedding* v. *Gallagher*, 69 New Hampshire, 650; 45 Atlantic Rep., 96-98.) At the first hearing, the question arose upon the demurrer of certain defendant cabmen, to bill filed by the transfer firm, which had an exclusive contract with the railroad company for the privilege of soliciting patronage upon the railroad grounds. The court, by PEASLEE, J., said:

> "The road cannot derive revenue from this situation by the admission of one such carrier and the exclusion of all others, under the guise that it is a mere letting of the use of its property, or the claim that neither the plaintiff nor defendants could go there as of right. * * * The cases from other jurisdictions upholding agreements like the one under consideration are in conflict with *Markham* v. *Brown* (8 New Hampshire, 523), and their reasoning is not very satisfactory. The one most relied upon (*Railroad Co.* v. *Tripp*, 147 Mass., 35; 17 N. E., 89), was decided by a bare majority of the court; and its soundness has been denied, not only by three of the seven judges who sat in the case, *but also in nearly every jurisdiction where it has since been considered.*" Citing *the Sootsma, Langlois, McConnell* and *Reed* cases, *supra*, which are relied upon by the petitioners here.
>
> "This conclusion renders it unnecessary to consider whether the statute is anything more than a declaration of the common law on this subject."

The plaintiff then amended his bill by charging that the defendants did not go upon the passenger station grounds and within the passenger station building and the approaches for the purpose of obtaining terms, facilities and conditions for the transportation of themselves or of their patrons; that all the roads entering the City of Manchester converged at such station, and that the transfer of passengers' baggage from the railroad owning the terminals to the other lines was done by the servants of that railroad, and that the defendant cabmen were not common carriers of baggage, as they claimed to be, and that they had acquired no right or permission from the railroad to go upon the grounds to obtain and transfer the baggage of arriving passengers, etc. The defendants again demurred, and again the Supreme Court sustained the demurrer.

Hedding v. *Gallagher*, 70 New Hampshire, 631; 47 Atl., 614.

Then the plaintiff again amended his bill by making the railroad company a party plaintiff, and alleging that he had performed the terms of his contract with the railroad company to the entire satisfaction of the general public; that the entrance by the defendants upon the railroad premises was an annoyance to the traveling public, and that the railroad company had not sufficient facilities to permit all plaintiff's competitors to solicit patronage upon the railroad grounds, —to which the railroad company had title. Again the defendants demurred, and the lower court sustained the demurrer. But when the case reached the Supreme Court for the third time, in 1903, the instant case had been decided, and the divergent authorities were, for

the first time, all collected and presented to the court; and that court, with but one dissenting vote, reversed its two prior decisions, and in a most exhaustive opinion adopted the reasoning and decision of the United States Circuit Court of Appeals in the present case.

Hedding v. *Gallagher* (N. H.), 64 L. R. A., 811-814, 816-818 to 822; 57 Atl., 225 (1903).

A further indication that the decisions following the *Langlois* case were rendered without a full presentation of the reasons and decisions, *contra*, is the fact that the opinion of the Supreme Court of Indiana, in *Indianapolis R. Co.* v. *Dohn*, 45 L. R. A., 427, was delivered by Judge Baker, who afterward, as United States Circuit judge, delivered the opinion of the Court of Appeals in the present case. In the *Dohn* case, the court said (428):

> "The majority of English cases appear to sustain, *and the majority of the American to deny* the right of a railway company to grant such an exclusive privilege. * * * In some of the cases, constitutional and statutory provisions enter into the determination, but, in the main, the question is decided from the points of view of the powers of the corporation, and of public policy."

Upon a collection of all the authorities, it appears that the right of the railroad company to make such an exclusive contract is sustained; *first*, by the decisions of our Federal Courts; *second*, by the decisions of the English courts under similar statutes; and *third*, by the decisions of the state courts of Massachusetts, New York, Georgia, Rhode Island, Pennsylvania, Tennessee, Connecticut, Ohio, Minnesota, Virginia and New Hampshire. It further appears that no decision or dictum *contra* has been announced since 1899.

And that of the decisions of the courts of Montana, Missouri, Michigan, Kentucky, Alabama, Mississippi, Indiana and Illinois, relied upon by the petitioners, the Illinois decision is the merest *dictum*, and nearly, if not quite all the others, are distinguishable by a difference in the question presented by the facts.

In *Audenried* v. *P. & R. R. Co.*, 68 Pennsylvania St., 370; 8 American Rep., 195-201, a somewhat similar question arose. The plaintiff filed a bill against the railroad company alleging that he had been accustomed to ship coal by the defendant's road to points beyond its line, to be transferred at its terminals on the Delaware river; and that the company had allowed him to use, for a certain consideration, certain wharves of which it was the owner at such terminals; but there being now insufficient wharfage for all, others were allowed the facilities, and the plaintiff was denied their use. The bill prayed an injunction to enjoin the discrimination against the plaintiff, and the lower court granted it. Upon appeal, the order was reversed, and the opinion of the court was delivered by SHARSWOOD, J., in which it is said:

> "Transportation by a common carrier is necessarily open to the public, upon equal and reasonable terms. An exclusive right given to one is inconsistent with the rights of all others. This was not transportation, but wharfage, the nature of which requires an exclusive possession temporarily. The railroad company, as trustee for the public, have a necessary distinction in the management of such interest, and the motives of their proceedings cannot be reviewed by the courts."